

TRANSCRIPT OF RECORDS

Supreme Court of the United States

OCTOBER TERM, 1924

No. 245

THE STATE OF MINNESOTA, PETITIONER

FIRST NATIONAL BANK OF ST. PAUL

FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE
STATE OF MINNESOTA

WRIT OF HABEAS CORPUS GRANTED NOVEMBER 12, 1924

RECEIVED NOVEMBER 12, 1924

(21,245)

(31,543)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 820

THE STATE OF MINNESOTA, PETITIONER,

vs.

FIRST NATIONAL BANK OF ST. PAUL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF MINNESOTA

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TRANSCRIPT OF RECORD

SUPREME COURT of the UNITED STATES
OCTOBER TERM, 1925

STATE OF MINNESOTA,

Petitioner,

—VS—

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
DIRECTED TO THE SUPREME COURT
OF MINNESOTA

CITATION.

The State of Minnesota to the Defendant Above Named:

WHEREAS, The County Auditor of said County has, on the 16th DAY OF AUGUST, A. D. 1922, filed with the Clerk of said Court a copy of the duly revised list of delin-

quent taxes upon personal property, for the year 1921 according to the provisions of the statutes in such cases made and provided.

AND WHEREAS, the sum of \$179,639.48 including penalty provided by law, appears upon said copy of the revised list as the taxes duly assessed against you, for personal property, for the year 1921 and that the same are due and delinquent; you are hereby cited to be and appear before the District Court aforesaid, at the next general term of said Court, commencing on the 2nd day of October, A. D. 1922 at 10 o'clock in the forenoon of that day, at the Court House in the City of St. Paul, in said County, then and there to show cause, if any there be, why you should not pay such taxes and penalty, and if you shall fail to pay said taxes, penalty and all the accrued costs thereon to the Sheriff of said Ramsey County, before the first day of said term of Court, or upon said first day of said term fail to show sufficient cause for said non-payment of said taxes, and all costs as aforesaid, judgment will be entered against you for said amount of said taxes, together with costs as aforesaid and disbursements.

Witness, The Honorable,

WILLIAM LOUIS KELLY,

Judge of said Court, and the seal of said Court, at St. Paul, in said County, this 24th day of August, A. D. 1922.

N. C. ROBINSON, Clerk.

By Charles J. Yarusso, Deputy Clerk.

(SEAL)

STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,

Against

FIRST NATIONAL BANK,

Defendant.

CITATION.

The State of Minnesota to the Defendant Above Named:

WHEREAS, The County Auditor of said County has, on the 11th DAY OF AUGUST, A. D. 1923, filed with the Clerk of said Court a copy of the duly revised list of delinquent taxes upon personal property, for the year 1922 according to the provisions of the statutes in such cases made and provided.

AND WHEREAS, the sum of \$176,650.39 including penalty provided by law, appears upon said copy of the revised list as the taxes duly assessed against you, for personal property, for the year 1922 and that the same are due and delinquent; you are hereby cited to be and appear before the District Court aforesaid, at the next general term of said Court, commencing on the 1st day of October, A. D. 1923 at 10 o'clock in the forenoon of that day, at the Court House in the City of St. Paul, in said County, then and there to show cause, if any there be, why you should not pay such taxes and penalty, and if you shall fail to pay said taxes, penalty and all the accrued costs thereon to the Sheriff of

said Ramsey County, before the first day of said term of Court, or upon said first day of said term fail to show sufficient cause for said non-payment of said taxes, and all costs as aforesaid, judgment will be entered against you for said amount of said taxes, together with costs as aforesaid and disbursements.

Witness, The Honorable,

OLIN B. LEWIS,

Judge of said Court, and the seal of said Court, at St. Paul, in said County, this 20th day of August, A. D. 1923.

N. C. ROBINSON, Clerk.

By B. E. Harman, Deputy Clerk.

(SEAL)

(Title of Cause.)

AMENDED ANSWER.

The above named defendant, The First National Bank of St. Paul, Minnesota, for its amended answer to the citation issued in the above entitled matter, and for cause why it should not pay the taxes and penalties described in said citation and demanded and attempted to be collected from it by the tax officers of the State of Minnesota and County of Ramsey, respectfully states and shows:

I.

That it is a national banking association, duly organized, created and existing under and pursuant to the national banking laws of the United States, and located in the

State of Minnesota, and having its principle office in the City of St. Paul, Minnesota, and, except as otherwise specifically provided in and by the Act of Congress, entirely and exclusively regulated, governed and controlled by the laws of the United States, in that behalf enacted.

II.

That, as such national banking association, it is an instrumentality and agent of the United States, and free from the control of the State of Minnesota, except as provided by the laws of the United States; and said State of Minnesota and each of the Counties, School Districts, Townships, Villages, Cities and Municipalities thereof are without power or authority to levy, assess or impose any tax upon the defendant, except as authorized by the laws of the United States.

III.

That the sole and only authority which the State of Minnesota or any of its political subdivisions or instrumentalities has to levy, assess or collect taxes from the defendant, or upon its shares of stock in the hands of individuals, is found in the provisions of the Act of Congress of June 3rd, 1864, as amended by the Act of Congress of February 10, 1868, the same being Section 5219 of the Revised Statutes of the United States, reading as follows:

“Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the Association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to two restrictions, that

the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of said state, and that the shares of any national banking association owned by non-residents of any states shall be taxed in a city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt real property of associations from either state, county or municipal taxes to the same extent, according to its value as other real property is taxed."

IV.

That on the 1st day of May, in the year 1921, there was in the hands of, and owned by, individual citizens of the State of Minnesota and residents of said County of Ramsey, money capital aggregating at least \$84,093,488.00, and in the State of Minnesota there was, upon said date and during the year 1921, money capital in the hands of individual citizens of said State amounting to at least \$425,745,839.00—all of which said money and capital came into competition with the defendant and the other national banks in the State of Minnesota, and elsewhere, in the carrying on and conduct of their respective business, and into competition with the money of the shareholders of the defendant invested in the capital stock of the defendant association.

V.

That said money capital so in the hands of individuals was taxed by the State of Minnesota and the Counties, Cities, Villages, Townships and School Districts thereof as money and credits for the said year 1921, pursuant to the provisions of Chapter 285 of the Laws of the State of Minnesota for the year 1911, as amended by Chapter 129 of the Laws of the State of Minnesota for the year 1917, and

that the total and aggregate rate of taxation levied, assessed and collected upon said money and credits so in the hands of individual citizens of the State of Minnesota for all purposes was three mills on each dollar of the fair cash value of said property.

VI.

That in addition to the property above mentioned, there was on the 1st day of May, 1921, a large amount of money capital in the hands and belonging to individual citizens of the County of Ramsey and State of Minnesota, aggregating many millions of dollars, which was invested in and represented by loans and debts secured by mortgages on real estate in said County of Ramsey, as the word mortgages is defined by Section 2301 of the General Statutes of 1913, and acts amendatory thereof; and there was also in the State of Minnesota on the 1st day of May, 1921, a large amount of money capital in the hands of and belonging to the individual residents and citizens of said State, aggregating many more millions of dollars, which was invested in and represented by debts and loans secured by mortgages on real estate in said State and outside of said Ramsey County, and upon all of said money capital there had been levied, assessed and collected, taxes at the rate prescribed and fixed by Section 2302 of the General Statutes of 1913, as amended by Chapter 73 of the laws of Minnesota for the year 1917 and Chapter 445 of the Laws of the State of Minnesota for the year 1921; and that the amount so paid for taxes on said property included the tax thereon for the year 1921 and other years; that all of said money capital came into competition with the national banks in the State of Minnesota and elsewhere, and the defendant and other banks of like nature in carrying on their respective business, and into competition with the money of the shareholders

of this defendant invested in the shares of its capital stock, and that the tax so imposed and collected upon said property was at a much lower rate than is sought to be imposed and collected upon the shares of stock of this defendant in this proceeding.

VII.

That on the 1st day of May, 1921, the aggregate par value of the shares of stock of the defendant association was \$3,000,000.00, and said association, upon said date, had on hand a surplus of \$2,000,000.00 and undivided profits amounting to \$1,371,847.48, and other funds amounting to \$277,958.37, making a total of \$6,649,805.85, as the actual cash value of its shares of stock.

That its real estate upon said date was of the value of \$647,587.84, leaving, exclusive of real estate, as the aggregate value of the shares of stock of said association, \$6,002,218.01, upon which a tax at the rate of three mills would have produced an aggregate of \$18,006.65, or a much smaller amount had the rate of taxation thereon been as provided by Section 2303, General Statutes 1913, as amended by Chapter 73, Laws of Minnesota for 1917 and Chapter 445, Laws of Minnesota for 1921.

VIII.

That, notwithstanding that fact, said tax authorities of the State of Minnesota added some amounts to said values as above set forth, and, finally taking forty per cent of the total so arrived at, found, as the basis for the taxation of said shares of stock for the year 1922, the sum of \$2,437,442.00, upon which amount, assuming to act under the authority of Chapter 416, Laws of Minnesota for 1921, said tax authorities levied, entered and extended an assessment

at the rate of 67 mills on each dollar thereof, giving as the amount of such tax, \$163,308.61, which is the tax with penalties attached now claimed to be the lawful tax in the citation and proceeding above entitled, which said proceeding is void and of no effect.

IX.

That among the assets of nearly, if not all, of the state and national banks operating in the State of Minnesota, there was on the 1st day of May, 1921, a large amount of the obligations of the United States of America, and the method provided by said Chapter 416, Laws of 1921 for the respective taxation of shares of stock of national banks and of the money capital of banks and mortgage loan companies organized under the laws of the State of Minnesota, will result in an unfair and unjust discrimination against the shareholders of the national banks in the State of Minnesota.

X.

That Chapter 416, Laws of Minnesota, for 1921, as to this defendant and its shareholders, is invalid, null and void, because it is repugnant to the Constitution and laws of the United States. That its enforcement as to defendant and its shareholders is beyond the power and authority of the State of Minnesota. That the same is void and of no effect, and the enforcement of the same and the collection of said tax attempted to be assessed would violate the Constitution and laws of the United States, and would deprive this defendant and its shareholders of the equal protection of the law, and would deprive this defendant and its shareholders of their property without due process of law.

WHEREFORE, this defendant prays that the attempted levy, assessment and extention of said tax be cancelled, annulled and set aside, and that plaintiff take nothing by this action, and that defendant have judgment for its costs and disbursements.

O'BRIEN, STONE, HORN & STRINGER,
Attorneys for Defendant,
1116 Pioneer Building,
St. Paul, Minnesota.

STATE OF MINNESOTA,
County of Ramsey.—ss.

Otto M. Nelson, being duly sworn, says that he is one of the officers, to-wit: the Vice President of the defendant in the above entitled action; that he knows the contents of the foregoing amended answer, and that the allegations thereof are true, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

OTTO M. NELSON.

Subscribed and sworn to before me this 1st day of June, 1923.

McNEIL V. SEYMOUR,
Notary Public, Ramsey County Minn.

My commission expires August 21, 1928.

(SEAL)

(Title of Cause.)

ANSWER.

The above named defendant, The First National Bank of St. Paul, Minnesota, for its answer to the citation issued in the above entitled matter, for collection of personal property tax for year 1922, and for cause why it should not pay the taxes and penalties described in said citation and demanded and attempted to be collected from it by the tax officers of the State of Minnesota and County of Ramsey, respectfully states and shows:

I.

That it is a national banking association, duly organized, created and existing under and pursuant to the national banking laws of the United States, and located in the State of Minnesota, and having its principle office in the City of St. Paul, Minnesota, and, except as otherwise specifically provided in and by the Acts of Congress, entirely and exclusively regulated, governed and controlled by the laws of the United States, in that behalf enacted.

II.

That, as such national banking association, it is an instrumentality and agent of the United States, and free from the control of the State of Minnesota, except as provided by the laws of the United States; and said State of Minnesota and each of the Counties, School Districts, Townships, Villages, Cities and Municipalities thereof are without power or authority to levy, assess or impose any tax upon the defendant, except as authorized by the laws of the United States.

III.

That the sole and only authority which the State of Minnesota or any of its political subdivisions or instrumentalities had to levy, assess or collect taxes from the defendant, or upon its shares of stock in the hands of individuals, is found in the provisions of the Act of Congress of June 3rd, 1864, as amended by the Act of Congress of February 10, 1868, the same being Section 5219 of the Revised Statutes of the United States, reading as follows:

“Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the Association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to two restrictions, that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of said state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in a city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt real property of associations from either state, county or municipal taxes to the same extent, according to its value, as other real property is taxed.”

IV.

That on the 1st day of May, in the year 1922, there was in the hands of, and owned by, individual citizens of the State of Minnesota and residents of said County of Ramsey, money capital aggregating at least \$83,796,840.00, and in

the State of Minnesota there was, upon said date and during the year 1922, money capital in the hands of individual citizens of said State amounting to at least \$400,688,948.00, all of which said money and capital came into competition with the defendant and the other national banks in the State of Minnesota, and elsewhere, in the carrying on and conduct of their respective business, and into competition with the money of the shareholders of the defendant invested in the capital stock of the defendant association.

V.

That said money capital so in the hands of individuals was taxed by the State of Minnesota and the Counties, Cities, Villages, Townships and School Districts thereof as money, and credits for the said year 1922, pursuant to the provisions of Chapter 285 of the Laws of the State of Minnesota for the year 1911, as amended by Chapter 129 of the Laws of the State of Minnesota for the year 1917, and that the total and aggregate rate of taxation levied, assessed and collected upon said money and credits so in the hands of individual citizens of the State of Minnesota for all purposes was three mills on each dollar of the fair cash value of said property.

VI.

That in addition to the property above mentioned, there was on the 1st day of May, 1922, a large amount of money capital in the hands and belonging to individual citizens of the County of Ramsey and State of Minnesota, aggregating many millions of dollars, which was invested in and represented by loans and debts secured by mortgages on real estate in said County of Ramsey, as the word mortgages is defined by Section 2301 of the General Statutes of 1913, and

acts amendatory thereof; and there was also in the State of Minnesota on the 1st day of May, 1922, a large amount of money capital in the hands of and belonging to the individual residents and citizens of said State, aggregating many more millions of dollars, which was invested in and represented by debts and loans secured by mortgages on real estate in said State and outside of said Ramsey County, and upon all of said money capital there had been levied, assessed and collected, taxes at the rate prescribed and fixed by Section 2302 of the General Statutes of 1913, as amended by Chapter 73 of the laws of Minnesota for the year 1917 and Chapter 445 of the Laws of the State of Minnesota for the year 1921; and that the amount so paid for taxes on said property included the tax thereon for the year 1922 and other years; that all of said money capital came into competition with the national banks in the State of Minnesota and elsewhere, and the defendant and other banks of like nature in carrying on their respective business, and into competition with the money of the shareholders of this defendant invested in the shares of its capital stock, and that the tax so imposed and collected upon the shares of stock of this defendant in this proceeding.

VII.

That on the 1st day of May, 1922, the aggregate par value of the shares of stock of the defendant association was \$3,000,000.00, and said association, upon said date, had on hand a surplus of \$2,000,000.00 and undivided profits amounting to \$1,394,585.04, and other funds amounting to \$667,125.48, making a total of \$7,061,710.52, as the actual cash value of its shares of stock.

That its real estate upon said date was of the value of \$533,606.46, leaving, exclusive of real estate, as the aggre-

gate value of the shares of stock of said association, \$6,528,-104.06, upon which a tax at the rate of three mills would have produced an aggregate of \$18,584.31, or a much smaller amount had the rate of taxation thereon been as provided by Section 2302, General Statutes 1913, as amended by chapter 73, Laws of Minnesota for 1917 and chapter 445, Laws of Minnesota for 1921.

VIII.

That, notwithstanding that fact, said tax authorities of the State of Minnesota added some amounts to said values as above set forth, and, finally taking forty per cent. of the total so arrived at, found, as the basis for the taxation of said shares of stock for the year 1922 the sum of \$2,611,-240.00, upon which amount, assuming to act under the authority of chapter 416, Laws of Minnesota for 1921, said tax authorities levied, entered and extended an assessment at the rate of 61½ mills on each dollar thereof, giving as the amount of such tax \$160,591.26, which is the tax with penalties attached now claimed to be the lawful tax in the citation and proceeding above entitled, which said proceeding is void and of no effect.

IX.

That among the assets of nearly if not all of the state and national banks operating in the State of Minnesota, there was on the first day of May, 1922, a large amount of the obligations of the United States of America, and said defendant on that day was the owner of bonds and obligations of the United in excess of \$11,000,000.00, and of bonds of the State of Minnesota and counties thereof in excess of \$,360,000.00, and the method provided by said chapter 416,

Laws of 1921, for the respective taxation of shares of stock of national banks and of the money capital of banks and mortgage loan companies organized under the laws of the State of Minnesota, will result in an unfair and unjust discrimination against the shareholders of the national banks in the State of Minnesota.

X.

That chapter 416, Laws of Minnesota for 1921, as to this defendant and its shareholders is invalid, null and void, because it is repugnant to the Constitution and laws of the United States. That its enforcement as to defendant and its shareholders is beyond the power and authority of the State of Minnesota. That the same is void and of no effect, and the enforcement of the same and the collection of said tax attempted to be assessed would violate the Constitution and laws of the United States and would deprive this defendant and its shareholders of the equal protection of the law, and would deprive this defendant and its shareholders of their property without due process of law.

WHEREFORE, this defendant prays that the attempted levy, assessment and extention of said tax be cancelled, annulled and set aside, and that plaintiff take nothing by this action, and that defendant have judgment for its costs and disbursements.

O'BRIEN, HORN & STRINGER,

Attorneys for Defendant,

1116 Pioneer Building,

St. Paul, Minnesota.

STATE OF MINNESOTA,

County of Ramsey.—ss.

Otto M. Nelson, being duly sworn, did say that he is one of the officers, to-wit, the vice president of the defendant in the above entitled action; that he knows the contents of the foregoing answer, and that the allegations thereof are true, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

OTTO M. NELSON.

Subscribed and sworn to before me this 28th day of September, 1923.

A. E. HORN,

Notary Public, Ramsey County, Minnesota.

My commission expires Oct. 20, 1927.

(SEAL)

STATE OF MINNESOTA, DISTRICT COURT,

County of Ramsey. Second Judicial District.

 146,399.

IN THE MATTER OF DELINQUENT PERSONAL PROPERTY TAX FOR
THE YEAR 1921.

 152,054.

IN THE MATTER OF DELINQUENT PERSONAL PROPERTY TAX FOR
THE YEAR 1922.

These cases came on for hearing before Hon. Chas. Bechhoefer, J., without a jury, Monday afternoon, October

22, 1923, H. H. Peterson, Rollin L. Smith and Patrick J. Ryan appearing on behalf of the State, and O'Brien, Horn & Stringer appearing on behalf of defendant First National Bank of St. Paul.

Mr. O'Brien: There are two cases here, may it please the Court, in which the First National Bank of St. Paul is the defendant, and it is agreeable to try them together.

Mr. Ryan: It is agreeable to the State.

Mr. O'Brien: There is the Twin Cities National Bank in which we will stipulate that that case will abide the result found in the First National Bank case.

Mr. Kerr: There was a case following this, your Honor, involving identically the same questions, the 1922 tax, of the Wabash National Bank, and we have already stipulated that we may abide the event of the First National Bank case. I think the stipulation is on file.

Mr. Ryan: The State offers in evidence the delinquent personal property tax-list upon the clerk's file for the years 1921 and 1922, with particular reference to the assessment against the shareholders of the First National Bank.

The Court: I suggest that an excerpt of that part be obtained and placed in the record.

The State rests.

Mr. O'Brien: We offer the tax rate for Ramsey County, Minnesota, for 1921 and 1922.

Received without objection.

Mr. O'Brien: May it please the Court, there are several gentlemen here from Minneapolis, and I would like to have the privilege of putting them on the stand at this time so they will not be compelled to come back tomorrow.

WILLIAM J. STEVENSON,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Will you give your full name?

A. William J. Stevenson.

Q. And where do you reside?

A. Minneapolis.

Q. Your business, Mr. Stevenson?

A. I am vice-president and trust officer of the Wells-Dickey Trust Company, director of the Wells-Dickey Company.

Q. That is a company organized at Minneapolis?

A. Yes, sir.

Q. It is an investment and trust company, is it?

A. There are two companies; the Wells-Dickey Company is the investment company and the Trust Company does a trust and banking business.

Q. The Wells-Dickey Company is an investment company?

A. Yes, sir.

Q. Under the laws of what state is the Wells-Dickey Company organized?

A. Minnesota.

Q. And what is the amount of its capital stock paid in?

A. Well, approximately \$1,200,000.

Q. And where is that stock held?

A. Held almost entirely in Minneapolis.

Q. By whom?

A. By the people actively connected with the company, with a very few exceptions.

Q. What I want to know, if individual citizens of Minneapolis are stockholders in this Investment Company?

A. Yes, sir.

Q. And what is the business of Wells-Dickey?

A. Buying and selling securities of various kinds.

Q. What class of securities does that company deal in?

A. It has been dealing in mortgages and bonds. We are not dealing in mortgages now to any extent.

Q. Dealing in bonds?

A. Yes.

Q. When did you cease dealing in mortgages?

A. We quit about the first of 1923.

Q. You ceased purchasing mortgages, loaning money on mortgages?

A. Yes.

Q. And since that time and before that you dealt in bonds?

A. Yes, sir.

Q. Now, what do you mean by bonds? What character of bonds?

A. Well, two principle classes, corporation bonds and municipal bonds.

Q. Municipal bonds of the state of Minnesota?

A. And other states, and Dominion of Canada.

Q. Do you include in municipal bonds certificates of indebtedness or warrants?

A. Not warrants but certificates of indebtedness we do.

Q. Will you please describe in general the way in which you handle mortgages upon real estate?

A. Well, we make the original loan to the farmer usually through the bank in the locality where the farmer resides, then we close the loan in our Minneapolis office and sell it to some investors somewhere in the United States, usually, then we handle the collecting of the interest and principle from the farmer through the local bank.

Q. Could you give us a minimum amount of such mort-

gages which were in existence on the 1st of May, 1921, mortgages that had passed through your office and are still unpaid?

A. I could not at this time. I did not look up that matter.

Q. Could you give us any idea of the minimum amount?

A. Over \$25,000,000.

Q. And what would you say as to the 1st of May, 1922?

A. It would be somewhat less, perhaps twenty million.

Q. And what proportion of that amount represented Minnesota real estate mortgages?

A. Practically none.

Q. None in Minnesota?

A. Not in those years and not of those that I have included in my figures. Our Minnesota mortgages practically all went to the Metropolitan Life Insurance Company of New York beginning with 1922. Prior to that time I do not think we got very many Minnesota mortgages, hardly any.

Q. Well, were there no Minnesota mortgages in May, 1921, still unpaid in Minnesota that had passed through your Investment Company?

A. Not worth mentioning.

Q. Most of those mortgages then were mortgages in other states?

A. Yes, sir.

Q. Now, can you give us the minimum amount of bonds purchased by the Wells-Dickey Company during the years 1921 and 1922?

A. I do not have that figure; I have the number that we sold to residents of Minnesota in 1921 and 1922.

Q. Well, give us that?

A. Over four million to residents of Minnesota in 1921, and double that much in 1922.

Q. And what bonds were those?

A. Those were all corporation bonds. Then of the municipal bonds, we have no very accurate way of telling the number of outside municipal bonds that were sold to residents of Minnesota. I can estimate that very closely, however. The bonds of municipalities outside of Minnesota, including Canada, and including bonds that we would buy on the market, about three million in each of those two years.

Q. Did those bonds include Minnesota bonds?

A. No, sir.

Q. Minnesota municipals?

A. No, sir.

Q. What can you say about Minnesota municipals?

A. I had that figure but I did not tax my mind with it because I assumed you didn't want that, but it would be not less than four million in each of those years of Minnesota municipals that were sold in Minnesota and outside of Minnesota.

Q. Now, state how long the Investment Company, Wells-Dickey Company, had been engaged purchasing and selling bonds in the manner you have described.

A. We have been in the bond business over twenty-five years.

Q. What would you estimate to be the average maturity of the bonds you spoke about, corporation bonds and municipal bonds?

A. Between eight and ten years.

Q. Now, assuming that in 1921 and 1922, in each of those years you had sold three million corporation bonds, and in each of those years four million Minnesota municipal bonds, if that amount of three million was multiplied by eight, would that give about the accumulation that there was in 1921?

A. If those were typical years—I couldn't say whether they were exactly normal or not, I would think that perhaps during the war we didn't sell quite so many.

Q. Will you give us your best idea as to whether forty-nine million would represent the amount of outstanding corporation and municipal bonds in the hands of Minnesota citizens which had been sold through the Wells-Dickey Investment Company on the 1st of May, 1921?

Mr. Ryan: I don't want to make any technical objection, but that is too speculative. It involves the supposition that those bonds, after having been sold in that manner, will remain in the hands of Minnesota investors.

Mr. O'Brien: I am frank to concede what Mr. Ryan suggests is true, that that may be reduced, but it is only by showing the aggregate dealings in this class of property that we can show as to whether or not the amount is substantial, so I think it is proper to go into it for what it is worth, it is not conclusive.

The Court: I think it would be well to take this testimony subject to the objection, and we can consider its value afterwards. I will take it subject to the objection.

Mr. Ryan: May that be understood as to all testimony, as to materiality and relevancy, that the State will not offer objection to each item but will argue the matter of its weight at the conclusion of the case.

The Court: Yes. On account of the mass of figures, it is quite important that it be done in that way.

Mr. O'Brien: Taken subject to the objection as to its materiality.

The Court: That will be understood.

Judge O'Brien, your question was as to Minnesota municipals sold in Minnesota?

Mr. O'Brien: Minnesota municipals sold in Minnesota and corporation bonds sold in Minnesota.

Witness: My testimony was as to foreign municipal bonds sold in Minnesota, not Minnesota municipals sold in Minnesota; that would be tax exempt any way. You probably didn't understand my answer.

Q. I thought that you said that you had those figures but you didn't charge your memory with them because you didn't suppose that would be required, but that at least it was not less than four million.

A. That is true, yes.

Q. I am talking of the figure four million for the municipals in each of those years and three million for the corporation sold in Minnesota; that would make a total of seven million sold in each of those years in Minnesota?

A. Well, I didn't say that the Minnesota municipals were sold in Minnesota.

The Court: In and out of Minnesota:

Q. What would you say were sold in Minnesota?

A. Over half.

Q. That would be two million. Were the corporation bonds sold in Minnesota, three million?

A. The figures that I gave you were of those sold in Minnesota including sales outside of Minnesota.

Q. That would be five million?

A. Yes.

Q. Now, would eight times five, forty million, be, in your judgment, a fair approximation of the amount of those securities outstanding in the hands of people in Minnesota?

A. No, I think that would be a little large, because I think those years were probably a little larger than our average year for eight years past.

Q. Will you give us your best judgment on that?

A. It would be more or less of a rough estimate. About thirty million.

Q. Those are securities sold through this one company?

A. Yes, sir. And then beside that, the foreign municipals sold in Minnesota that are taxable. I have not included those, bonds of Montana, North Dakota and Dominion of Canada, Iowa and Wisconsin, that were sold to residents of Minnesota. This thirty million is for all municipals in

or out of the state sold within Minnesota.

Q. That would be thirty million of corporation bonds of Minnesota corporations and two million of municipal bonds of Minnesota sold in Minnesota?

The Court: Corporation bonds issued in this state and municipal bonds issued in this state sold to citizens of Minnesota, sold within the state of Minnesota?

Mr. O'Brien: Yes, sir.

Witness: I didn't mean to be so understood. The corporation bonds are not necessarily Minnesota corporations, usually not; not five per cent of them would be Minnesota corporations. They would be bonds of outside corporations that were sold here.

Q. Such as what?

A. Such as public utility bonds from all over the middle west, or railroad bonds, or industrial bonds, and sometimes farm mortgage bonds.

The Court: That covers Minnesota municipals and corporate bonds?

Witness: Yes, sir, but not necessarily originating in Minnesota.

The Court: Sold to parties within the state.

Q. Does the Wells-Dickey Company deal in commercial acceptances?

A. No, sir.

Q. Or unsecured promissory notes?

A. No, sir.

Q. Now, the other corporation is the Trust Company and Bank?

A. Yes, sir.

Q. And what is the name of that corporation?

A. Wells-Dickey Trust Company.

Q. And you occupy the same position in that corporation as in the Wells-Dickey Company?

A. No, I am vice-president of that.

Q. And how long has that company been in existence?

A. Seven and a half years.

Q. What is the capital stock of the Trust Company?

A. Half a million.

Q. Does that company act as executor and administrator and trustee and agent for investors?

A. Yes, sir.

Q. Where is the stock of that company held?

A. That is owned by individuals resident of Minnesota without exception, and some of it is held by the Wells-Dickey Company.

Q. Can you give us the aggregate amount of trust property that is now held by that company?

A. No, I could not.

Q. Would you be willing to state a minimum amount?

A. No. In the first place, we do not carry our real estate at any value at all.

Q. Well, exclusive of real estate?

A. You mean as agent as well as in other fiduciary capacities?

Q. Well, or anything to separate them.

A. We keep all our agency and trust securities together in one control account.

Q. Give us the—

A. You mean on what day?

Q. What you consider its value or amount?

A. At this time?

Q. Yes.

A. Over seventeen million. That is not accurate but it is not less than that.

Q. What was it on May 1, 1921?

A. Between fourteen and fifteen million; not less than that.

Q. As a rule, who are the equitable owners of that property? That is, what class of persons are the equitable own-

ers of the property and the legal owners, of course, of the property which you hold as agent?

A. Well, individuals scattered all over the United States.

Q. Yes, individuals scattered all over the United States, but it is almost all the persons interested in the property that are individuals?

A. Almost exclusively, yes.

Q. And what proportion of those individuals are residents of the state of Minnesota?

A. Oh, a rough estimate would be 90 per cent.

Q. In what class of personal property are the funds belonging to trust estates of the agency accounts in this Trust Company invested?

A. In just as many classes as there are.

Q. If you receive stocks, you are authorized to continue to hold what you receive, I presume?

A. Yes, sir.

Q. Where you make an investment on behalf of the cestui que trust and authorize its security as prescribed by the state of Minnesota?

A. Sometimes what is permitted by the trust document itself.

Q. It depends upon the character of the trust?

A. Yes.

Q. What do you say with regard to the great proportion of that property being invested in mortgages and bonds, corporation bonds and municipal?

A. Well, I would think not less than three quarters of it was invested in bonds and mortgages of various kinds.

Q. Can you give us the minimum amount of the holdings of the Trust Company in United States Government bonds?

A. No, I do not know. You mean what the Trust Company own itself?

Q. What proportion of your capital is invested in United States Government bonds?

A. No, I don't know.

Q. Or in municipal bonds of the state of Minnesota?

A. I do not know that.

Q. Do each of these companies deal in United States Government bonds?

A. I think the Trust Company only deals in United States bonds over the counter, buying and selling from people who want to dispose of them or people who want to buy.

CROSS-EXAMINATION.

By Mr. Ryan:

Q. What are the general powers of the Wells-Dickey Company?

A. Buy and sell securities or real estate or act as agent or broker. There are a great many others but I think that covers most of it.

Q. Did your company in fact, on May 1, 1921, own any real estate, speaking now entirely of the Wells-Dickey Company, not the Trust Company?

A. I think they owned a few scattered pieces in Minnesota. Their outside real estate in North Dakota is owned by the Wells & Dickey Company, a North Dakota corporation, the stock of which belongs to Wells-Dickey Company.

Q. About what was the value of the real estate held by the company in its own name?

A. I couldn't tell you that.

Q. Couldn't give us any idea at all?

A. No. We don't deal in real estate. That might be just what we had acquired one way or another or mortgage foreclosures or something of that sort, where we bought it back from the investor.

Q. Was it important in amount in relation to capital?

A. I couldn't give you any figure at all on that.

Q. Can you tell us about how much of the capital stock

of the Wells & Dickey Company of North Dakota was owned by the Wells-Dickey Company?

A. I think practically all of it.

Q. About how much was that?

A. I don't know. That was all history when I went with the company.

Q. You don't know what the capital stock of the corporation was?

A. No. It is an inactive company. It merely holds North Dakota assets when we get them, that is all.

Q. Do you know about what the assets of the North Dakota company were?

A. No, I do not. It maintains no office, has no business.

Q. Does the Wells-Dickey Company own the stock of the Trust Company?

A. Yes.

Q. Do you know how much of the stock it owns?

A. No, I do not, but over half of it. It has the control.

Q. Do you know whether or not any of the stock of the Wells-Dickey Company is owned by corporations?

A. There might be some shares owned by corporations, I don't know; I doubt it, but there may be some. It would be a very negligible quantity, however.

Q. Do you know to what extent the company has invested in property other than real property and other than intangible property, whether it owns any personal property of a tangible nature, and if so, to what extent?

A. Nothing but our office equipment and perhaps some bonds or stocks that we may have bought that became unsalable, but our entire capital is used in the buying and selling of securities.

Q. You can't state what securities your company held on May 1, 1921, can you?

A. You mean the Wells-Dickey Company?

Q. Yes.

A. No, I couldn't.

Q. And could you state what bond securities your company held on May 1, 1922?

A. No. Our return to the assessor would be the best evidence of that.

Q. You can state, can you not, that on either of those dates, whatever you held consisted of bonds or mortgages other than as you have already described, that you held some shares of stock in the Wells & Dickey Company of North Dakota and some shares of stock in the Trust Company?

A. (No answer.)

Q. Now, all your capital was invested, as I understand, on both of those dates, in certain bonds and mortgages?

A. Very largely, yes.

Q. And you specified among the bonds and mortgages which you customarily bought, railroad bonds, industrial bonds and state or municipal bonds of Minnesota and elsewhere?

A. And public utility bonds.

Q. What do the public utility bonds consist of?

A. Why, bonds of various public utility companies all over the United States, but particularly in the middle west.

Q. By that you mean electric power companies, electric light companies?

A. Electric light companies and street railway companies, and water companies, heating companies.

Q. Do you think of any other type of public utility bonds that you are accustomed to deal with and which you might have had there on May 1, 1921 or 1922?

A. Telephone and telegraph bonds of public utilities. I don't know what we might have had on hand at that time. We might have had very few of some classes.

Q. You don't know how much of each?

A. No.

Q. But insofar as you had bonds, those were the types

of bonds that you have described as public utility bonds. Now, in addition to that, you had railroad bonds?

A. I don't know that we had any. We deal in them.

Q. You deal in them. If you did have any—I am speaking of the kind of bonds that you might by any possibility have had on those dates, since you can't state to us definitely what they were.

A. Yes.

Q. Now, what other bonds—municipal bonds, bonds issued in Minnesota or the adjoining states, any of the states of the union, and bonds issued by the public subdivisions of those states?

A. Yes, and foreign government bonds.

Q. Can you think of any other bonds that you might have had?

A. Yes; we might have had bonds of individuals.

Q. That is one of the things I am getting at. To what extent, if any, did you, during 1921 and 1922, have on May 1st of either of those years among your investments, any bonds issued by individuals?

A. Well, it would be impossible for me to tell what bonds we had in stock on any particular date. I can think of very few issues in either of those two years that were issued by individuals.

Q. What would be the maximum amount of bonds issued by individuals which you might have had at any time during 1921 and '22.

A. You mean resident in Minnesota or outside?

Q. Any place.

A. Well, I don't think of a single issue in either of those two years, but if there were any, I would say \$50,000 would cover all of them, because they are always small issues.

Q. Now, whom do you sell these bonds to? To whom did it sell these bonds during those years?

A. We sell through our salesmen to individuals, some-

times to banks, sometimes to smaller dealers; sometimes we wholesale bonds to other dealers in other cities outside of Minnesota or inside of Minnesota.

Q. Most of your bonds are sold through your individual salesmen, are they?

A. Yes, sir.

Q. Your salesmen are located in Minneapolis, St. Paul and other cities throughout the state?

A. Well, Minneapolis is the head office, and most of the traveling salesmen travel from out of the Minneapolis office. We have a St. Paul office, and the salesmen work from there. We have a Great Falls, Montana, office, and we have a Chicago office; we have a Regina office and Saskatchewan.

Q. And salesmen travel out of each of those offices?

A. With the exception of the Regina office.

Q. And the salesmen do not confine their efforts to the cities which have been mentioned, but cover all of the territory generally embraced in the limits of those cities in the Northwest?

A. Well, they cover whatever territory we think is profitable to travel through. We have another branch office which I forgot to mention; that is the one at Duluth. Salesmen travel out of that office, too.

Q. Now, you say—take in 1921—you sold about four million dollars of corporation bonds to residents of Minnesota?

A. Yes, sir, not less than that, not less than four million.

Q. Can you state about what proportion of those four million dollars you sold to other dealers?

A. No, I couldn't, but if they were sold to dealers outside of Minnesota, that would not be included in that figure.

Q. You couldn't give us any fair estimate of the proportion of that four million dollars that went to those other dealers?

A. No. Our wholesaling is a minor part of our sales,

however, on corporation bonds, because other dealers can buy those corporation bonds from the syndicate just as well as we can.

Q. Can you state approximately what proportion of that four million dollars you sold to banks?

A. No, I couldn't. Banks do buy from our salesmen and then they resell to their local customers.

Q. You couldn't give us any idea as to what proportion of that whole they buy?

A. No.

Q. You can't give us any idea as to what proportion of the whole went to individuals?

A. No, I couldn't, but much the greater portion goes to individuals.

Q. Now, for 1922 can you give the proportion of it any more definitely than you have?

A. No, sir. I would say what I stated for 1922 for corporate bonds.

Q. You sold over eight million?

A. Yes, that is right.

Q. For 1921, as I recall your statement, you sold municipal bonds other than Minnesota Municipal bonds, to the extent of about three million dollars?

A. Within Minnesota.

Q. That was within Minnesota?

A. Yes.

Q. Can you state approximately how much of those bonds you sold to corporations and how much to individuals and how much to banks?

A. No; I wouldn't think we sold much of any to corporations, because they are long-time bonds, and banks do not buy long-time bonds for themselves. They would buy them to resell in their communities.

Q. You can't throw any further light on that, however?

A. No.

Q. As to Minnesota municipal bonds, you state that it is your impression that in 1921 you sold about four million dollars within and without the state?

A. Not less than that?

Q. And probably over half of those in Minnesota?

A. Yes.

Q. Can you give us any idea as to the relative proportion in which those were sold to individuals, to banks and corporations.

A. No, except that municipal bonds of all kinds, being tax exempt under the federal income tax law, are more in demand by the individual investor than they are by any corporation, because the corporation does not get the benefit of that exemption.

Q. Now, as to the Wells-Dickey Trust Company, I understood you to say that over half of the stock of that company was in the hands of the Wells-Dickey Company?

A. Yes, sir.

Q. Do you know whether any of the remaining stock is in the hands of corporations or was in the hands of corporations on May 1, 1921 or May 1, 1922?

A. None of it is owned by any corporation.

Q. Did the Trust Company own any real estate?

A. Yes, sir.

Q. Can you state approximately its value as of May 1, 1921?

A. \$125,000.

Q. The same of 1922?

A. Yes, sir.

Q. Do you know anything of the amount of its capital invested in tangible personal property of any kind?

A. Except cash.

Q. Were its furniture and fixtures any appreciable amount?

A. No, not worth mentioning. I think I should say about

that stock of the Trust Company that is owned by Wells-Dickey Company, it stands in the name of individuals on the books of the Trust Company.

Q. It is actually owned by the corporation?

A. Yes.

Q. Now, when you say that your trust and agency funds—75 per cent you believe were invested in bonds and mortgages of various kinds. Can you tell us whether, on May 1, 1921, and again as of May 1, 1922, any of those funds were invested in bonds of individuals?

A. No, they were not, with the exception of a few farm land bonds, perhaps, that the individuals had bought from different people and had put into our hands in some capacity.

Q. But you don't specifically recall that there are or were any of such bonds?

A. It would be a negligible quantity.

Q. As to mortgages, those mortgages were scattered, some Minnesota mortgages and some mortgages in other states?

A. Yes, sir.

Q. And you can't give us the proportions?

A. No, I couldn't. I don't even know now what proportion of the fund was in mortgages.

By Mr. O'Brien:

Q. Did either of those companies loan money on collateral security?

A. The Trust Company does, yes, in the banking department.

Q. To what extent?

A. 100 per cent; that is, all of our loans are secured by collateral.

Q. Can you describe the collateral generally?

A. The collateral would be bonds very largely; once in a while, stock, market stock, market listed stock.

By Mr. Ryan:

Q. Your Trust Company operates to some extent as a bank, does it?

A. Yes, sir.

Q. You receive deposits?

A. Receive deposits.

CHARLES V. SMITH,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Smith, what is your occupation?

A. I am vice-president and trust officer of the Minnesota Loan & Trust Company in Minneapolis.

Q. That company is located in Minneapolis?

A. It is.

Q. Under what state laws is it organized?

A. Minnesota.

Q. What is the amount of its capital stock?

A. A million dollars of capital and a million dollars of surplus.

Q. Any undivided profits?

A. My recollection is between three and four hundred thousand dollars.

Q. Where is the stock of that company held principally?

A. The directors of that company each own ten shares, or a thousand dollars, of its stock; the balance of the stock is held by trustees who hold the stock for the pro rata benefit of the stockholders of the Northwestern National Bank of Minneapolis.

Q. Do you know where the stockholders of the National Bank reside?

A. I should say that 90 per cent or more of the stockholders reside in Minneapolis.

Q. In this state?

A. Yes, sir.

Q. Does the Minnesota Loan & Trust Company receive deposits?

A. It does.

Q. Pay out money on checks?

A. It does.

Q. So that it does a banking business?

A. To the extent of receiving deposits. It doesn't do a commercial banking business. In lieu of commercial accommodations our company gives a small rate of interest on its deposits.

Q. Does that company act as trustee, as administrator, executor and agent and factor?

A. It does.

Q. It acts in each of those capacities?

A. Yes, sir.

Q. What is the minimum aggregate value of the personal property held by that company as trustee?

A. In our bookkeeping we carry our trust assets as including estates, trusts under wills, trusts under agreements, and guardianships. I can't give you the figure that you are asking, just for trusts under wills and agreements.

Q. Can you give us the aggregate figure for the accounts which you mentioned?

A. Yes, sir. Exclusive of real estate, they would run at this time, in the trust assets, approximately twenty-seven million dollars.

Q. What was that amount on May 1, 1921?

A. I haven't the figure on May 1, 1921. I have it at the end of the last previous year, 1922. On December 26, 1922, approximately twenty-four million dollars.

Q. How much did that increase the two years previous, the years 1921 and 1922?

A. In 1921, the trust assets, including real estate, was about twenty-six million dollars. Our real estate, ordinarily,

is approximately ten per cent of our total trust assets.

Q. Well now, from that can you say what you would consider was the minimum amount held, personal property, on the 1st of May, 1921?

A. Somewhat in excess of twenty-three million dollars.

Q. And in what class of securities was that money invested, those trust assets?

A. Mortgages, bonds, contracts for deeds, stocks, certificates of deposit, and miscellaneous assets, such as unsecured notes which we inherit the estates, and book accounts.

Q. Could you segregate those items?

A. I could at the present time.

Q. Well, do it for the present time?

A. At this time we have about \$6,200,000 of mortgages or trust accounts, \$9,700,000 of bonds, \$500,000 of contracts for deeds, \$8,500,000 of stocks, \$9,000 of certificates of deposit, and a million dollars of miscellaneous.

Q. Of that miscellaneous, what portion are of unsecured notes?

A. I couldn't answer you.

Q. Will you state whether or not those proportions existed on and since May 1, 1921?

A. I believe that no item would vary as much as ten per cent from its proportion of those amounts through a period of the last two or three years.

Q. What class of persons are beneficiaries under the trusts and estates you have mentioned?

A. Generally individuals, some charities or corporations; charities are beneficiaries; sometimes a municipality, and we have one very substantial trust where the Minneapolis Charity of Fine Arts is the beneficiary.

Q. To what extent are individuals the beneficiaries?

A. Well, I should think that more than 90 per cent of our trusts are held for individuals.

Q. And that relation has prevailed on and since May 1, 1921?

A. It has.

Q. And what proportion of those individuals are residents of the state of Minnesota?

A. More than 90 per cent.

Q. Now, as a practical matter, do you annually make a return as trustee of each of those trusts to the tax authorities?

A. We do.

Q. And each class of property is taxed by the taxing authorities, according to the statutes of the state?

A. Yes, sir.

Q. And where you are acting as agent, that is the same thing? Do you make a return, or does the individual make return in that case?

A. The individual makes the return where we act as agent.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Did the Northwestern Trust Company own any real estate on May 1, 1921?

A. Yes, sir.

Q. Approximately what was the value of the company's real estate?

A. We owned a parcel of real estate at 313 Nicollet avenue. That is carried on our books at \$150,000.

Q. Anything else?

A. We foreclosed mortgages on about fifty farms.

Q. I am speaking now of the property of the Trust Company, not of its trust fund.

A. I am also speaking of that. As a Trust Company we foreclosed mortgages belonging to the company, as I

understand it, on about fifty parcels of farm lands on which the mortgages aggregated about \$100,000 and which we are not carrying on our books as an asset at all. Those farm lands we are not carrying on our statement as an asset at all at this time.

Q. Is there any other real estate owned by the Trust Company?

A. Not that I know of.

Q. You don't own the quarters which you occupy?

A. No, we rent.

Q. Is that statement of real estate true as of May 1, 1922, as well as 1921?

A. Mr. Mulcahy, who will come on the stand a little later, could answer that question a little better. I imagine we have added to some of our real estate holdings in the last year.

Q. You say that each of the directors of the company own ten shares of the corporate stock?

A. Yes. The law requires that each director shall own ten shares to qualify.

Q. How many directors are there there?

A. We have now twenty-seven directors.

Q. I am speaking of May 1, 1921?

A. Yes, twenty-seven I think.

Q. Is there any understanding as to the transfer of those shares if the directors should resign?

A. Yes. Those shares are all held in such manner that if a director ceases to be a director, he takes in the place of his ten shares of stock, eight shares of the Northwestern National Bank stock.

Q. In effect, then, the shareholders of the Northwestern National Bank and the shareholders of the Minnesota Loan and Trust Company are identical?

A. That is true.

Q. They were so as of both dates. There is naturally

no rivalry, then, between the Northwestern National Bank and the Minnesota Loan & Trust Company?

A. Well, in general, the lines of business of a Trust Company and a bank are separate lines; one rather supplements the other, so that there is no occasion for rivalry between the two institutions.

Q. You do not believe that the Trust Company, then, comes into competition with the Northwestern National Bank?

A. Not to any great extent. It does on its deposit side somewhat.

Q. It does what?

A. It does in the matter of receiving deposits, it competes somewhat with the bank.

Q. Insofar as it receives deposits, it competes with the bank?

A. Yes; it pays interest on checking accounts, and the bank does not.

Q. In your judgment does it compete with the Northwestern National Bank or with any other National Bank in Minneapolis in any other respect?

A. Well, it receives savings accounts. It pays half a per cent more, I think, than the bank does. In that way it competes.

Q. Can you think of any other way in which it competes with the Northwestern National Bank or with any other National Bank?

A. Its trust department, of course, competes with the trust department of any National Bank that has a trust department.

Q. Can you think of any other way in which it competes?

A. That is so with any National Bank that might have safety deposit boxes, we would compete with them.

Q. Do you think of any other way in which your company competes with either the Northwestern National Bank

or any other National Bank of Minneapolis?

A. No.

Q. And of course if it doesn't compete with the National Banks of Minneapolis it would not compete with any other National Bank in the state?

A. No.

Q. You don't believe, do you, that in handling the investments or any trust funds, say, in buying bonds and securities with those funds that you come in competition with the Northwestern National Bank or any other National Bank of the State?

A. I wouldn't think so to any extent.

Q. Do you think that insofar as your company buys or deals in mortgages, in looking after its trust funds and keeping them invested, it comes in competition with the Northwestern National or any other National Bank of the state?

A. It might. On the purchase of mortgages we would compete with banks, either directly or indirectly that bought and sold mortgages, but otherwise I should think not, and the same way with bonds, if they were in the habit of buying and selling securities we might have competition with banks in that way.

Q. Would it be any appreciable, material competition?

A. I would not think so.

RE-DIRECT EXAMINATION

By Mr. O'Brien:

Q. You are in the market for bonds and mortgages and properly secured loans, are you not?

A. Yes, our company is all the time.

Q. Every bank in the state is in the market for securities of that sort, is it not?

A. Well, every bank buys some classes of securities, you might say, all the time.

Q. Now, is it not true that wherever there is a group of buyers, in the absence of some peculiar circumstances, buyers who want to deal in the same property, that they are all competitors.

A. Well, that is so of investment houses, yes.

Q. Isn't that a fact?

A. Yes.

Q. And in the same way, a group of sellers are selling competitors, are they not?

A. Yes.

Q. Now, does your company occasionally make a bid for some particular issue of bonds issued by municipalities in a county or a city, or some corporation?

A. Yes, sir.

Q. And when you make those bids, do you find other companies bidding?

A. Yes, sir.

Q. And do you find amongst those companies different banks often bidding?

A. Where banks have clients that desire securities.

Q. Never mind about that. Do you find the banks bidding, National Banks?

A. Yes, sir.

Q. You are competitors, are you not, when you submit those bids?

A. In that way, yes, sir.

Q. Do you know that there is a large amount of money loaned through brokers without security in the state of Minnesota?

A. Yes, sir.

Q. By persons other than bankers?

A. Yes, sir.

Q. Isn't that money competing with the money in the banks or with the money of bankers?

A. It is, yes, sir, to some extent.

Q. When you minimize the competition, you mean that the Minnesota Loan & Trust Company and the Northwestern National Bank act somewhat together?

A. They have identity of stockholders and their lines of business supplement each other.

Q. You don't sustain that relation with all the other National Banks, do you?

A. The relationship, of course, is not as close, is not quite the same between other banks as it is between the—

Q. If you were bidding, or the Northwestern National Bank was bidding for an issue of bonds in the City of Minneapolis or the City of St. Paul, or the City of Crookston or the First National Bank also, you would all be competitors, would you not?

A. Yes.

Q. And that is constantly going on, is it not?

A. Yes, sir.

Q. There are millions of dollars involved in the amount so bid, are there not?

A. That is true.

Q. And in that sense it is all competitive money, is it not?

A. Yes, sir.

Q. Therefore, when one invests in National Bank shares, he puts his money into that competitive market, does he not?

A. Yes, sir.

Q. You maintain an office in St. Paul, do you not?

A. Yes, sir.

Q. You buy in that market and sell also in that office?

A. I think that market is confined largely to selling rather than buying.

Q. You loan money here, do you not?

A. Yes, sir.

RE-CROSS EXAMINATION

By Mr. Ryan:

Q. When National Banks bid for bonds being offered, as you say they sometimes do, that is a very rare thing, is it not?

A. I wouldn't say it was rare. They are in the market frequently for bonds either for themselves or their clients.

Q. Do you recall any instances in 1921 or 1922 in which a National Bank bid for an issue of bonds?

A. No, I can't give you specific instances of that.

Q. Now, isn't it true that that is one of the reasons why the National Banks have affiliated Trust Companies to do that for them?

A. Where they have the affiliated Trust Companies, the Trust Companies ordinarily conduct the investment side of the business. I believe that is true.

Q. And it is true, isn't it, that all of the larger National Banks of the state have affiliated Trust Companies?

A. Many of them do.

Q. Wouldn't you say nearly all of them?

A. Well, in Minneapolis, for instance, we have only three banks that have affiliated trust companies. Two of them are the largest banks there. The third largest bank, however, has no Trust Company.

Q. Those other National Banks, then, when they have to bid for issues of bonds are in reality not competing against anybody else or National Banks, are they?

A. Well, all that are in the market, of course, are bidding.

Q. Yes, but when National Banks come into the market bidding for those issues, they are usually met by competitive bids, bids of Trust Companies affiliated with National Banks, aren't they?

A. Where they have such affiliations, yes, sir.

Q. And isn't it true, usually, that when National Banks go into a bid, make offers to municipalities and to industrial corporations or public utility corporations that take over and issue their bonds, that they do it because they have some individual client who desires them to do it, and they do it in his interest?

Objected to as incompetent and immaterial.

Received subject to objection.

A. Well, I think for that reason, and for the further reason that they often make money by buying and selling securities.

Q. Well, taking up the latter part of that answer, that the National Banks often make offers to buy whole issues of bonds by municipalities or by public service corporations, or by railroads, to what extent is that true? Is it done in any appreciable degree or amount?

A. Well, I think to a very large extent in some localities.

Q. Well, for instance, the St. Paul and Minneapolis National Banks, do they very often do that?

A. I can't speak so much for St. Paul. I don't believe the Minneapolis banks do it to a very large extent.

Q. Do you think it is done to any appreciable degree in Minnesota?

A. I couldn't answer your question.

By Mr. O'Brien:

Q. Is it not true that many of the National Banks of Minnesota have bond departments in their bank?

A. I believe some of the Duluth banks have.

Q. The Metropolitan Bank of Minneapolis?

A. The Metropolitan Bank of Minneapolis.

Q. And is it not also true of the Midland National Bank of Minneapolis?

A. Yes, sir.

Q. And of a great many banks in Duluth?

A. The Duluth banks, I believe, have followed that custom.

Q. And in Winona?

A. I don't know about Winona.

Q. So that the dealings in bonds—at least the Metropolitan and the Midland of Minneapolis are sufficiently large that they have a special department for that purpose?

A. I recall now that that is true.

Q. Do you know how many National Banks there are in Minneapolis?

A. I believe now we have just four.

By Mr. Ryan:

Q. Isn't there a difference between the kind of securities that a bank will invest in for itself and the kind that it will buy for clients?

A. Yes, I should say so. The bank ordinarily for itself would buy short-time securities and for its clients longer time.

Q. And it is also true, isn't it, that the ordinary individual investor is not buying short-time securities?

A. Yes, sir, that is true.

Q. That the bank is usually looking for one kind of security and the individual investor for a totally different kind of security?

A. Yes, sir.

By Mr. O'Brien:

Q. Would it surprise you to know that the aggregate capital stock of the National Banks of the state of Minnesota amounts to thirty-seven million dollars, in round numbers, and that the aggregate holding of those banks in Minnesota, in Government bonds, United States securities, is forty-one million, National Banks in the state?

A. I didn't have that figure in mind. I don't claim to be a banker.

DAVID R. WEST,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Your name is David R. West?

A. Yes.

Q. And what is your occupation, Mr. West?

A. I am assistant secretary of the Minnesota Loan & Trust Company in the bond department.

Q. You reside in Minneapolis?

A. Yes, sir.

Q. Will you please give us approximately the number of sales of bonds made by the Minnesota Loan & Trust Company to individuals in Minnesota during the year 1921 and the year 1922?

A. In 1921, over seven million, and in 1922 over ten million. I should say this, I have here only the total sales to individuals everywhere, but over 90 per cent of our sales to individuals are in Minnesota.

Q. Now, how long has the company been engaged in that business?

A. For forty years.

Q. What do you say as to the average maturity of those securities?

A. I would say in the neighborhood of eight years.

Q. And taking that, what would you say was the aggregate amount of outstanding bonds which your company had sold to residents of Minnesota on the 1st of May, 1921?

A. Well, to be safe, I would say over twenty-five million.

Q. And how about the first of May, 1922?

A. Increasing every year.

Q. Now, such of those bonds as were issued by municipalities outside of Minnesota, under the Money and Credits Act should be returned for taxation, should they not?

A. Yes.

Q. And that is true also of corporation bonds when the mortgage is not recorded in Minnesota?

A. Yes.

Q. All of those corporation bonds, where the mortgage is recorded in Minnesota, were not required to be returned, under the Money and Credits Acts?

A. No, sir.

Q. And of course none of the municipals in Minnesota?

A. No.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Of the bonds sold in 1921—an estimate of seven million dollars—can you tell us what part of those bonds were issued by Minnesota corporations?

A. I would say approximately a million five hundred thousand dollars.

Q. Did that include Minnesota state and municipal bonds?

A. That million and a half did not; just Minnesota corporations that was; that was private corporations. The Minnesota municipals was three million in that year; Minnesota private corporations were \$1,500,000, outstanding on May 1, 1921.

Q. Those corporation bonds that you speak of are railroad bonds, public utilities—

A. Public utility and industrial; mostly public utility and industrial.

Q. And mostly bonds issued by corporations?

A. Yes.

Q. Was there any appreciable part of those bonds issued by individuals?

A. I don't recall any during those years issued by individuals.

Q. You say that there were seven million dollars of bonds sold by you to individuals in Minnesota. Do you mean to exclude sales to corporations in Minnesota?

A. Excluding banks and insurance agencies, and I don't know of any other corporations we sell to. There may have been one or two corporation sales in there.

Q. During that year you did sell bonds to banks?

A. Yes, but that isn't included in that total.

Q. And did you sell bonds to National Banks in Minnesota or other state banks?

A. Very seldom. Occasionally we sell bonds to National Banks. There are not as many National Banks as there are State. We sell some to National Banks, yes.

Q. They are in the market to buy and they buy from you as well as from anybody else?

A. The smaller ones do, yes; the larger ones do not.

Q. Did you, in 1921, buy bonds from banks? Speaking now of buying them from banks rather than selling them to banks?

A. Well, I presume we bought them from banks as well as other dealers. We always do buy from dealers and from other banks.

Q. You deal with the banks both ways, buying and selling?

A. Yes.

Q. And you deal with the National Banks both ways, buying and selling?

A. Yes.

Q. But in a lesser degree you think than the other banks. Why is that—because the National Banks are usually larger and are better able to buy and sell bonds than the smaller banks?

A. Well, when I first answered that question that we did less business with them I meant less retail business. We do a bigger wholesale business with National Banks than with

State Banks, because I know of no State Banks who really are operating a bond business, whereas there are some National Banks who are operating a bond business.

Q. And in respect to those National Banks who are operating a bond business, you buy from them and sell to them?

A. Yes.

Q. And do that on a large scale?

A. Yes, sir, fairly large scale. I couldn't give you the figures on it at all.

Q. Could you roughly say about how much bonds you bought from National Banks in 1921, and how much bonds you sold to National Banks in 1921?

A. I wouldn't have any idea whatsoever. I couldn't give you any answer on that at all. We do not classify them. They really would be classified among our dealers as dealers rather than as banks.

Q. You have your list, and as the individual comes, you may want to sell them some more bonds some day?

A. Yes, sir. We have a list of banks that we do business with, too, but we don't classify the National Banks that are dealers as banks, we classify them as dealers.

Q. I suppose you can't give us anything as to the year 1922, different than 1921?

A. No, different, I can't give you any different classification?

Q. You have the figure here of seven million sold to individuals, and ten million in 1922. Can you say that it was either as much—that you bought from National Banks as much as that or that you sold to National Banks as much as that?

A. Oh, no, it wouldn't be as much as that.

CHARLES V. SMITH,

recalled on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Smith, when you were giving the amount of your trust assets, did you include in that agency assets?

A. I did not.

Q. How much did they amount to?

A. A little over nine million dollars at this time.

Q. How much did they amount to on the 1st day of May, 1921?

A. I haven't that figure. At the end of last year they amounted to slightly in excess of seven million dollars.

Q. About how much did they amount to May 1, 1921?

A. I haven't the figures for May 1, 1921?

Q. Can you give us your best judgment?

A. I should say approximately six million dollars.

Q. And the funds in this account were invested in what class of security?

A. In bonds and mortgages, stocks.

Q. Did you ever make an investigation for the purpose of determining the number of bonds taxable in Minneapolis, that is, bonds of other states?

A. No, sir.

Q. That were held by individual citizens of Minnesota?

A. No, I have not.

WILLIAM J. STEVENSON

recalled on behalf of defendant, testified:

By Mr. O'Brien:

Q. You were speaking a while ago of corporate bonds, bonds issued by Minnesota corporations secured by real estate, they come under the head of mortgages, do they not?

A. No, We wouldn't put them under the head of mortgages.

Q. Are there any other corporate bonds in Minnesota that you know of than those secured by real estate?

A. Yes, sir. The Tri-State Telephone Company issued a million and a quarter, I think, of three-year notes that were secured by a trust indenture running to us, but there was no real estate security.

Q. Were those handled through your company?

A. Yes.

Q. And to whom were they sold?

A. Well, we were in a syndicate with the National City Company of New York. They handled about half of them, and the other half were sold through our territory.

Q. To whom?

A. All classes of buyers; some dealers.

Q. And sold any to citizens of Minnesota?

A. Oh, yes, a great many of them sold.

Q. When was that issue made?

A. It was a three-year issue and I think it matured in 1922. It would be April or May, 1919, I think, when they were being sold during the succeeding year, but they were not due until April, 1922, I think.

Q. Have you had an opportunity of forming an estimate of the amount of money invested by individual citizens of the State of Minnesota in mortgages outside of the state of Minnesota?

A. Not in mortgages alone, no, sir, but in mortgages and taxable bonds I have.

Q. That is, you considered the bonds of other states of corporations outside of Minnesota or mortgages outside of Minnesota?

A. Corporation bonds secured by other than Minnesota real estate, municipal and foreign government bonds outside of Minnesota but sold to Minnesota residents.

Q. Have you had an opportunity of seeing how much of that class of security is sold here?

A. Yes, sir.

Q. You have observed the general course of investments?

A. Yes, sir.

Q. And you think that you have a judgment upon that question that is approximately correct?

A. Well, I wouldn't say it was approximately correct; I think I have a pretty fair estimate.

Q. What is your best judgment as to the amount of money so invested by individual citizens in the state of Minnesota?

A. In excess of one hundred million dollars.

CROSS EXAMINATION

By Mr. Ryan:

Q. You say that these taxable bonds in Minnesota outstanding at the present time, in your judgment is about one hundred million dollars?

A. The taxable ones.

Q. Could you give or form an estimate as to the amount of such bond issue on May 1, 1918?

A. No. It would be considerably less.

Q. I only asked you that because I have the former tax commission report which indicates the total of such bonds reported for taxation within the state, and the total was \$14,708,895. That being so, your judgment would not be modified in that respect, would it?

A. Somebody must have forgotten to report, but I wouldn't say that it was anywheres near as much in 1914 as—

Q. This was 1918.

A. 1918,—as it is today. In 1918 there was lots of money going into United States liberty bonds.

Q. Well, you haven't anything tangible or definite upon which to base those figures?

A. Yes. The confidential reports that we get from other dealers, and from the Federal Reserve Bank, gives a pretty fair basis upon which to make our estimate.

Q. Now, you spoke of these telephone companies' three-year notes. What was the security behind those notes?

A. There was no security. There was an indenture note. They agreed that they would not mortgage their property until the notes were paid off, and that they would keep their assets up to a certain figure—their quick assets.

Q. In a great measure that put all their assets, particularly their real assets, behind the notes, didn't it?

A. Yes, it did, in a sentimental way, but it didn't in a legal way, so that they didn't become tax exempt in Minnesota, because no mortgage registry tax was paid because of that indebtedness.

Q. But because they couldn't mortgage their real estate or do anything with their assets, it left that real estate, even from a legal standpoint, standing squarely behind those notes?

A. Yes, but there was no lien.

Q. And when you sold those bonds, the purchaser asked your salesmen what there was behind those bonds, what security, and he said because of the condition under which they are issued, behind them is all the real estate belonging to that company?

A. No, the real estate was mortgaged anyway. The real estate was already mortgaged.

Q. Was it mortgaged to any appreciable extent?

A. Yes, it was; it was at the time that they took over the Northwestern Telephone Company here.

Q. What were their assets that made the notes good?

A. Their franchise and their earning capacity.

Q. Their poles and wires?

A. Their equipment.

Court here adjourned until Tuesday morning, October 23rd.

FRANK J. MULCAHY,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Mulcahy, where do you reside?

A. Minneapolis.

Q. And what is your occupation?

A. I am assistant secretary and assistant treasurer of the Minnesota Loan & Trust Company.

Q. What department of the company have you charge of?

A. Mortgage-loan.

Q. Please give us the amount of mortgages upon real estate purchased by the Minnesota Loan & Trust Company, sold by that company to individual citizens in the State of Minnesota and outstanding and unpaid on the 1st of May, 1921?

A. That would be just approximate; we don't have any records of that kind, but my guess would be about five to seven million.

Q. Now, those were mortgages negotiated during similar previous years?

A. Yes.

Q. Including mortgages negotiated during previous years?

A. Yes.

Q. And what about May 1, 1922, what would be the amount?

A. Well, I think the mortgages outstanding would be approximately the same.

Q. Can you give us the amount of mortgages on real es-

tate still owned by the company on each of those dates?

A. I could only approximate that. While our bills receivable on May 1, 1921, was \$1,461,684. that included city loans, Minnesota Farm loans, North Dakota, South Dakota and Montana. Now, I have not an analysis of the different divisions as of that date, but I have an analysis as of August 1922, which shows the number of Minnesota mortgages and the number of Minneapolis and St. Paul mortgages, and I think that would be fairly close as respect to dates.

Q. If you will give us the amount on those dates and then tell us how that amount compares with the 1st of May, 1922, and the 1st of May, 1921.

A. On August 11, 1922, our bills receivable was \$1,681,805.24 as against \$1,461,000 in May, 1921, and \$1,419,000 in May, 1922. I think the increase of approximately \$200,000 is in—we are holding a little more city mortgages at this time than we are farm, because our farm mortgage business has kind of quieted down.

Q. You are speaking now of the mortgages that are in the hands of the public but owned by the company?

A. These are all mortgages.

Q. And all Minnesota real estate mortgages?

A. Now, these are mortgages owned by the company in those respective divisions that I have just named to you, city, Minnesota, North Dakota, South Dakota and Montana.

Q. Can you give us the amount of those mortgages owned by the company on Minnesota real estate, Minnesota mortgages?

A. I can give you the exact as of August 11, 1922.

Q. What was it?

A. Minnesota farm mortgages were \$317,514.40.

Q. In your judgment, how does that amount compare with the holdings on the 1st of May, 1922, and the 1st of May, 1921?

A. Well, it is approximately the same, because the

amount of farm mortgage business has been just about—we haven't increased it in that period.

Q. How long have you been connected with the Minnesota Loan & Trust Company?

A. Since June, 1902.

Q. And all that time have you been in the mortgage department?

A. I started in as office boy and have been largely in the mortgage department.

Q. So you have a great familiarity with those matters?

A. Well, I know considerable about them.

Q. Are you familiar with the other securities held by the company?

A. You mean as to bonds and mortgages?

Q. Yes, bonds and trust estates.

A. No, I have no knowledge of those.

Q. Estates of deceased persons or those under guardianship?

A. No, sir.

Q. Now, to get an idea of how these mortgages are handled, mortgages that you have testified that were in the hands of the public, take the case of city real estate, a loan is made by the company, is it?

A. Our city mortgages are made almost exclusively direct to the company.

Q. By the company?

A. By the company, except as to St. Paul and Duluth direct without—through a broker.

Q. And those mortgages are held by the company for sale?

A. They are made and completed with their own funds and then sold to individuals, institutions, etc.

Q. These mortgages are recorded mortgages that you have spoken of?

A. Yes, sir.

Q. Upon which registry tax was paid?

A. Yes, sir.

Q. Could you distinguish in the testimony you have given between city mortgages and farm mortgages?

A. Well, the figures that I gave as to mortgages, \$317,000, that had reference to Minnesota farm mortgages. Now, at the same period, on August 11, 1922, we had city mortgages amounting to \$930,240. They were all in Minnesota; some were in St. Paul, some were in Minneapolis, and I think some in Duluth.

Q. How did that amount compare with the amount held on the first of May, 1922, and the 1st of May, 1921?

A. I think that they were about two hundred to two hundred fifty thousand more than in 1921, because our bills receivable in 1921, was \$1,461,000, whereas, as of this date, it is \$1,607,000. There is about \$200,000 difference there, and I think an analysis would show that it was almost—

Q. When you spoke about the amount of mortgages outstanding on May 1, 1921, and May 1, 1922, I think you gave that in the neighborhood of five million?

A. Yes.

Q. Are you now referring to Minnesota mortgages?

A. I was referring to Minnesota farm mortgages at that time.

Q. Well, at those dates were there any outstanding city mortgages in the hands of the public?

A. Yes.

Q. Which had been sold by you?

A. Yes.

Q. Minnesota mortgages?

A. City mortgages on properties in Minnesota cities, yes.

Q. Could you give us an estimate of the amount of that class?

A. I think about twelve to fourteen million.

Q. That were outstanding, mortgages upon real estate

property sold by you to the public.

The Court: That was on the 1st of May, 1921?

Witness: Yes.

Q. And what proportion of those mortgages was held by citizens of Minnesota?

A. I don't believe I can answer that question because I haven't any analysis of it. I have attempted to make an analysis of the sales of 1921. In 1921 we sold a million and a half of city mortgages, of which seven hundred fifty thousand went to institutions in the east, outside of Minneapolis.

Q. Approximately 50 per cent were sold to outside institutions?

A. Yes.

Q. And the other 50 per cent sold where?

A. I think right over the counter to local people?

Q. To individual citizens?

A. To individuals.

Q. Do you think that fairly represents the course of business in mortgages?

A. I think it does.

Q. Was there anything unusual that year in the number of local people that were purchasing as compared with the outsiders?

A. No, I don't think at that time there was.

CROSS EXAMINATION

By Mr. Ryan:

Q. When you speak of these sales having been made over the counter, do you mean at your Minneapolis local office or do you mean at all your offices located as they were described yesterday throughout the Northwest?

A. Well, the amount of mortgages that are sold are negligible outside of our Minneapolis office.

Q. Then you would say that mainly they were sold at your Minneapolis office?

A. Yes.

Q. And to individuals rather than to corporations?

A. Yes. That is about \$750,000 in 1921, and the other \$750,000 went to institutions in the East, Insurance Companies.

Q. Now, take these city mortgages you speak of, for instance; how does your company actually get those mortgages? How does it make the loans?

A. Well, we advertise for them through the newspapers. We have two men out soliciting the loans, looking up the permits. Those are the two principle ways, and through the fact that over a series of years it is known that the Trust Company has financed a number of these city properties.

Q. National Banks do not, as a rule, advertise money to loan on mortgages, do they?

A. Well, I think not. I don't know of any.

Q. So far as you know, National Banks do not employ solicitors to procure persons who desire to borrow money?

A. Well, I know of one National Bank that was pretty active in Minneapolis making city loans. That was the Minneapolis National out on Lake and Nicollet. They do quite a city business.

Q. That was during what years?

A. I think for several years past—1921 and 1922.

Q. Did they make those loans through the bank?

A. Well, I don't know how they made them, whether they made them through the bank. All I know is that the Minneapolis National would make the loans. I don't know whether they had a subsidiary company or not, as to that.

Q. What would you say as to the maturity of the mortgages which you made upon city property?

A. Well, the small residence loan, that is the loan that is ordinarily sold over the counter, it is usually made for

three years, while the larger loan, the loan that is on business property and goes East, that is made for generally five years, and sometimes ten.

Q. Did you make any loans for as short a period as a year?

A. I don't recall any at the moment, sir.

Q. Your company wouldn't want that, would it?

A. We might do it.

Q. On real estate particularly for as short a period as a year?

A. Well, our mortgage department wouldn't because it wouldn't be a salable loan for our department. If we got it it would be as an accommodation to some client. What we usually do in a case like that, if a man wants a year loan, why the commission on a year loan would be the same as on three years, and give him the privilege of paying in a year.

Q. Application for loans for a year are inconsiderable, if any, are they not, with your company?

A. They are with us, yes.

Q. Don't you believe it would be true, as a general proposition, that there are no companies like yours which virtually deal in mortgages on city property in a shorter period than one year?

A. Speaking from a standpoint of sale of loan, that would be true. A loan due in a year would be a difficult loan to sell. The shortness of time would make it objectionable to the purchaser.

By Mr. O'Brien:

Q. There is one question I would like to ask you. The privilege of paying off loans on any interest days is a very common provision in mortgages, is it not?

A. It is a custom that we have rather encouraged in the small residence loan, because we believe it is a desirable thing to let the home owner acquire a larger equity and get

his home clear. In the larger loans, the business property loan, the prepayment privilege makes it, of course, unsalable.

E. P. DAVIS

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. You are the president of the Northwestern Trust Company in this city?

A. Yes, sir.

Q. And have occupied that position how long?

A. Since the first of January.

Q. Prior to that time how long had you been connected with the company?

A. Seven years.

Q. What has been your business in St. Paul for some time past?

A. Handling real estate, investments, mortgages.

Q. Mortgage loans?

A. Yes, sir.

Q. You reside in this city?

A. Yes, sir.

Q. What is the capital of the Northwestern Trust Company?

A. A million dollars.

Q. Has it any surplus?

A. Yes, sir.

Q. What is its surplus?

A. Approximately \$500,000,—\$480,000 I think it is.

Q. And any undivided profits?

A. No; a small amount, I think fifteen thousand.

Q. Was that approximately its condition on May 1, 1921; and May 1, 1922?

A. The surplus and undivided profits I think were \$380,000.

Q. May 1, 1921?

A. Yes, sir.

Q. And they greatly increased up to the amount you now state?

A. Yes, sir.

Q. Does the Northwestern Trust Company receive deposits?

A. No, sir.

Q. It doesn't do a banking business in that sense?

A. No, sir.

Q. What were the gross earnings of the Northwestern Trust Company for the year 1921 outside of interest received on government securities and—

A. I can't give you the figure exactly.

The Court: Had you completed your question?

Mr. O'Brien: Well, I hadn't completed it altogether, no.

A. The gross earnings tax was in the neighborhood of \$15,180.

Q. I wanted to get the amount of gross earnings outside of the tax exempt, securities, the gross earnings less the interest on United States municipal bonds and the interest paid on borrowed money. Have you got those figures in mind?

A. About \$326,000, as I recall it. I haven't the figures. I think our tax amounted to \$15,100 and some odd.

Q. Is the Northwestern Trust Company engaged in the business of buying and selling mortgages upon real estate?

A. Yes, sir.

Q. On its own account?

A. Yes, sir.

Q. Does it also handle trust estates?

A. Yes, sir.

Q. And estates of deceased persons?

A. Yes, sir.

Q. And estates of persons under guardianship?

A. Yes, sir.

Q. Does it also act as agent for investors and take care of the securities of the investors?

A. Yes, sir.

Q. Now, in the matter of taxation, the Northwestern Trust Company pays a gross earnings tax upon its own earnings?

A. Yes, sir.

Q. The trust estates are accounted for as separate items, are they not, to the taxing authorities?

A. Yes, sir.

Q. And the same is true of the estates of deceased persons and persons under guardianship?

A. Yes, sir.

Q. Can you tell us whether or not the Northwestern Trust Company deals in loans upon collateral?

A. No, sir.

Q. It does not?

A. No, sir.

Q. What were the total holdings of the Northwestern Trust Company in mortgages secured upon real estate in Minnesota on the 1st of May, 1921?

A. You mean the Northwestern Trust Company itself or the agent?

Q. The Northwestern Trust Company itself.

A. I couldn't answer that because I don't know the figures. I haven't the figures at hand.

Q. Do you know what the total amount of the trust estates—

A. That would be a big job to figure up. It would go into millions.

Q. Do you know what the total of trust estates were in the hands of the Trust Company of that date?

A. They are in excess of, I should say, twenty-five million dollars.

The Court: May 1, 1921?

Witness: Yes.

Q. Do you include in that the estates of deceased persons and persons under guardianship?

A. Yes.

Q. And agency accounts?

A. Yes.

Q. So that the entire amount held by the Northwestern Trust Company, in its capacity as trustee, executor, administrator, guardian and agent exceeded twenty-five million?

A. Yes, sir.

Q. Now, will you tell us what those estates consist of mainly?

A. Real estate, real estate mortgages, some stocks, bonds, some real estate contracts.

Q. Can you give us an approximation of each amount?

A. No, I couldn't, not without a good deal of figuring.

Q. Could you give us an approximation of the amount of real estate held upon those trusts?

A. I should say it was in the neighborhood of three and a half million.

Q. And the amount of real estate contracts?

A. I should say approximately two hundred thousand. That varies a good deal.

Q. The amount of stocks?

A. I couldn't give you that.

Q. Will you give your best judgment as to the lowest minimum amount of mortgages and bonds held in those accounts?

A. I should judge it was very close to twenty-two million dollars.

Q. Now, of those real estate mortgages, what proportion was upon Minnesota real estate?

A. Well, 80 per cent, I presume, of all the mortgages we make, and held in trust funds, are Minnesota mortgages. Our practice has always been to invest in Minnesota mortgages because they are tax exempt.

Q. 80 per cent?

A. Yes, sir. It may run over that.

Q. You mean after the registration tax has been paid?

A. Yes.

Q. And how are the bonds divided? What is the character of the bonds?

A. On the trust estates they are all first mortgage bonds, a good many municipals.

Q. By first, you mean mortgage bonds secured by real estate?

A. Yes, sir.

Q. Corporation bonds?

A. Yes, corporation bonds.

Q. Individual Bonds?

A. Yes.

Q. And what proportion of those are on Minnesota property?

A. That I couldn't say. I never figured it out.

Q. Can you give us an approximation of the minimum amount there also?

A. I couldn't, because we own so many government notes, treasury notes and government bonds.

Q. I am talking of corporation bonds?

A. Yes.

Q. What proportion of those bonds are secured by Minnesota real estate?

A. I couldn't give it. It would be a big job to figure it out because we don't keep it on our books in accordance with Minnesota. We would have to pick out every bond in every trust fund.

Q. And then a large number of municipals, you say?

A. Yes.

Q. And United States government bonds?

A. Yes, sir.

Q. United States certificates of indebtedness?

A. Yes, sir.

Q. Did I ask you to give us an approximation dividing the mortgages from the bonds?

A. I don't remember that you did. I couldn't say off-hand because we don't keep our books so that we divide the bonds and mortgages. We keep our books so that each trust estate is lumped.

Q. Can you give an approximation of how the bonds were divided between corporation bonds and municipals, or United States bonds?

A. Well, in 1921 there were more United States bonds than there are at the present time. I should say that we have approximately three million dollars of United States government bonds at the present time and treasury notes, but between the corporation and municipal, I couldn't.

CROSS-EXAMINATION.

By Mr. Ryan:

Q. The Northwestern Trust Company is affiliated with the First National Bank of this city, is it not?

A. I presume it is, yes, the same ownership practically.

Q. The stockholders of the First National Bank are stockholders of the Northwestern Trust Company, are they not?

A. I couldn't say exactly. There are some, I presume, stockholders of the First National Bank that do not own stock in the Northwestern Trust Company.

Q. Are there any stockholders of the Northwestern Trust Company who are not holders of stock of the First National Bank?

A. Yes, sir.

Q. Can you state in percentages the holdings of stockholders of the First National Bank in the Northwestern Trust Company?

A. I didn't quite get that.

Q. What percentage of stock of the Northwestern Trust Company is held by stockholders of the First National Bank?

A. 87 per cent, I should say of the stockholders of the Northwestern Trust Company were stockholders of the First National Bank,—if that answers your question.

Q. That covers it, yes. Is there any identity of officers of the two corporations?

A. Well, two directors of the First National Bank are directors of the Northwestern Trust Company, two out of nine.

Q. Is there any identity of other officers?

A. You mean of presidents?

Q. The executive officers?

A. No, sir.

Q. Do you know whether or not the stock of the Northwestern Trust Company held by stockholders of the First National Bank is held in any trust agreement or voting arrangement or anything of that kind?

A. Not that I know of.

Q. You don't know that that is not so?

A. No, I don't.

Q. The Northwestern Trust Company occupies the same building as the First National Bank, does it not?

A. Part of the same building.

Q. And isn't it true, as a general proposition, that the Northwestern Trust Company is an adjunct of the First National Bank?

A. I wouldn't say that, No.

Q. How would you describe the relationship between them?

A. Well, absolutely independent, my understanding of it.

Q. You mean they are separate corporations?

A. Separate corporations and separate offices, and the First National Bank has nothing to do with the management of the Northwestern Trust Company, or the Northwestern Trust Company with the management of the First National Bank.

Q. In their business relations do they deal with each other, for instance, as if the First National Bank would deal with the Merchants Trust & Savings Bank?

A. I should say so.

Q. And you do business with the other National Banks in the city the same as you do business with the First National Bank?

A. Yes, sir.

Q. You don't throw business to the First National, and the First National doesn't assist you in getting business?

A. Well, I suppose that some of our business may come from the First National Bank.

Q. Does your Trust business go to the First National?

A. No, sir, except we keep our accounts in the First National Bank, and we keep our accounts in the American National and also the National Exchange. We keep our accounts in various banks throughout the city.

Q. You don't keep them only in the First National Bank?

A. We keep more in the First National Bank, yes, sir.

Q. What is the purpose of those other accounts in the other banks?

A. Well, I don't know what the purpose is except that they don't want to keep them all in one bank.

Q. That wouldn't be the purpose. There is a profit in those deposits, isn't there?

A. I suppose there is.

Q. And the people who are interested in your bank would be giving that profit to some other rival bank when they could perfectly well have it in the bank on which they would—

A. But they don't dictate where we keep our deposits.

Q. Your stockholders do not dictate where you keep your deposits?

A. No, sir.

Q. Well, that is a curious corporation. Your stockholders elect their directors, do they not, as any other corporations?

A. Yes, sir.

Q. Well, your directors determine how they will handle their funds regardless of the interest of the stockholders?

A. They have, yes.

Q. And you consider that to be true, do you?

A. Yes.

Q. Is there any other reason that you know of why the Northwestern Trust Company maintains deposits in National Banks which are rivals to the First National Bank?

A. No other reason than I have given.

Q. Is there any other reason that you know of?

A. No, sir.

Q. Your stockholders are aware of that, are they?

A. Yes, sir.

Q. They are willing to forego—suffer that loss of profit which results therefrom?

A. I presume so.

Q. And without any compensating advantage that you know of?

A. I presume so.

Q. Are you sure that it isn't done because of any arrangement with the other banks with whom you deposit for getting some of their business for your Trust Company?

A. They have trust departments of their own.

Q. Has the American National Bank a trust department?

A. Well, they do a certain amount of trust business.

Q. Have they a trust department?

A. No, they have not a trust department.

Q. Are they authorized to do a trust business?

A. Under the Federal Act they can.

Q. But in order to do that they must have a trust department, must they not?

A. Yes, they must.

Q. Well, under the Federal Act, unless they have a trust department, they cannot legally do any trust business?

A. No, they can't.

Q. You say that they nevertheless do it?

A. Well, when I say they do it, I think the officers of the company act as individual trustees; I don't know, but I know we don't get much business from them.

Q. Is that true of the National Exchange Bank?

A. Yes.

Q. Did you say you had an account at the Merchants National Bank?

A. No.

Q. How about the Capital National Bank?

A. When I say the Merchants, we have one trust that has an account at the Merchants. We have always had it.

Q. That is an exceptional situation?

A. Yes, sir.

Q. The Merchants National Bank is an affiliated Trust Company, is it not?

A. Well, I presume it is affiliated.

Q. You know that the Merchants Trust & Savings Bank is affiliated with the Merchants National Bank, do you not?

A. Well, not actual knowledge. I know that they are the same stockholders.

Q. Well, your testimony is, in stating the facts here, limited, as is your testimony in connection with the Merchants National Bank and the Merchants Trust & Savings Bank?

A. Yes.

Q. You don't know that?

A. I don't know as an absolute fact. I understand that it is merely an understanding that they do.

Q. Do you carry deposits with the Capital National Bank?

A. No, sir.

Q. The Capital National Bank also has an affiliated Trust Company?

A. Yes, sir.

Q. Has it occurred to you, or does it occur to you, that there is a reason why you carry accounts with some National Banks who have not affiliated Trust Companies and do not carry deposits with National Banks which have affiliated Trust Companies?

A. Never thought of it that way.

RE-DIRECT EXAMINATION

By Mr. O'Brien:

Q. I don't know whether you stated the amount of stock of the First National Bank and Northwestern Trust Company that were held by identical persons. I don't mean exactly the same holdings by the same person, but with one or two persons that held certain proportion of the stock?

A. I lumped the whole when I said 87 per cent.

Q. You said 87 per cent of the stock of the Northwestern Trust Company was held by stockholders in the First National Bank?

A. Yes, sir.

Q. On May 1, 1921, where did the holders of a majority of the stock of the Northwestern Trust Company reside?

A. St. Paul.

Q. Is there still a considerable amount of stock of the Northwestern Trust Company held by citizens of St. Paul?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Ryan:

Q. Does the Trust Company itself, this corporation, own any of the stock of the First National Bank?

A. Not as a corporation, but we do have some of the trust funds.

Q. About how much?

A. I couldn't tell you accurately.

Q. What percentage of the stock, approximately?

A. Oh, it wouldn't be over five or six per cent.

Q. And, of course, the First National Bank does not, as a corporation, own any of the stock of the Trust Company?

A. No, sir.

CHARLES D. LUNDIN,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Your name is Charles D. Lundin?

A. Yes, sir.

Q. And what is your business?

A. Chief clerk, department of banking.

Q. You are here in response to a subpoena served upon the Bank Examiner in this case?

A. Yes, sir, superintendent of Banks.

Q. Does the department of the state of Minnesota, which might be called the banking department, prepare consolidated statements showing the condition of the banks and trust companies and savings banks organized under the laws of Minnesota?

A. We issue a call four times a year, and we compile a tabulation. An abstract is prepared.

Q. Will you please produce the consolidated statement prepared by the banking department with the date nearest May 1, 1921?

Paper produced and marked Ex. C.

Q. Will you please state what exhibit C is?

A. It is a comparative abstract of the condition of state banks, savings banks, trust companies, and they are consolidated, and compared with previous calls.

Q. State whether or not that statement substantially shows the condition of those banks as of May 1, 1921?

A. Why, there might be some change in the condition in that time.

Q. I said substantially. Take the statement nearest preceding May 1, 1921. Produce that.

Paper produced and marked Ex. D.

Q. Will you please give the date of Ex. D?

A. February 21, 1921.

Q. And the date of Ex. C?

A. June 30, 1921.

Q. Now please examine those statements and state whether the condition of the state banks was substantially the same between those periods.

A. Well, there have been some changes. There have been some increases in some items and decreases in others.

Q. Well, I am asking you substantially. For instance, take Ex. C. I see by Ex. D. that the capital stock of the state banks was \$28,334,500; is that the same?

A. Yes.

Q. The surplus shown by Ex. D was \$11,707,017.30; is that the same on Ex. C?

A. Well, there is a slight—

Q. Well, give us the amount?

A. \$11,668,502.

Q. The undivided profits shown by Ex. D were \$2,743,968.17?

A. \$2,400,040.27.

Q. Now, take the resources. On Ex. D I find United States bonds held by those banks, \$15,944,746.67.

A. \$13,369,840.32.

Q. On Ex. D, other bonds and securities is \$15,102,967.03?

A. \$16,060,513.90.

Mr. O'Brien: Counsel for the State says that he will admit these statements substantially show the condition of the—

Mr. Ryan: That either of them will.

Mr. O'Brien: Yes.

Mr. Ryan: For the purpose of this case.

Q. Now, will you please produce the two statements nearest to May 1, 1922, prepared by the banking department?

Paper produced and marked Deft's. Ex. E, being No. 158, dated April 7, 1922.

Deft's. Exs. C, D and E offered in evidence.

The Court: I suppose that is the same understanding, substantially the same on May 1, 1922, the same understanding as previous?

Mr. Ryan: Yes, that the exhibit shows substantially the condition as the figures indicate, as of May 1, 1922.

Q. Each of these statements is prepared in the same manner, I believe?

A. Yes, they are.

Q. The first column shows the condition, resources, liabilities of corporations organized under the laws of Minnesota doing an exclusive banking business?

A. Yes, sir.

Q. That is, commercial banking business?

A. Yes.

Q. The second column shows the condition of the savings banks organized under the laws of Minnesota?

A. Yes, sir.

Q. The third column shows the condition of the trust companies organized in the state of Minnesota?

A. Yes, sir.

Q. And the fourth column the consolidation of all of those?

A. Yes, sir.

Q. I want to ask you, whether, in the third column marked "26 Trust Companies" there is included all the trust companies, those that do a banking business and those that do not?

A. All trust Companies.

Q. All of the Trust Companies?

A. Yes.

Q. As a part of the reports here made to your department and part of the records of your department, have you a list of the stockholders of the banks?

A. We have.

Q. Those shown in the first column?

A. Yes, sir.

Q. What proportion of the stock of the banks shown in the first column of Exs. C, D and E is owned by individual citizens in Minnesota?

A. Oh, probably better than 95 per cent of all of them. Probably, figuring on the older ones, about 90 per cent?

Q. The Trust Companies do not report?

A. They do not.

Q. You are unable to give that information with respect to the Trust Companies?

A. No, I can't give that.

Mr. Ryan: I suggested that you prepare a statement similar to these which have been introduced and limited to Ramsey County. Were you able to do that?

Witness: Partly.

Q. Please turn to the exhibit that you have, looking at Exs. C, D and E, among the resources of the banks I find in the first column "U. S. Bonds", a certain amount. Those refer to securities of the United States Government?

A. Yes, sir, liberty bonds.

Q. That is true of each of these columns where we find that item?

A. Yes, sir.

Q. "Other bonds and securities," what is meant by that?

A. Municipal bonds and industrial bonds.

Q. Does it mean industrial bonds?

A. Well, it would include them.

Q. Well, can you say what that item really includes?

A. Why, I couldn't say.

Q. Municipal bonds?

A. Yes.

Q. Certificates of indebtedness?

A. No.

Q. Certificates of indebtedness and municipals?

A. Well, yes.

Q. Warrants issued by municipals?

A. Yes, sir.

Q. What proportion of that item found in Ex. D, which amounted to \$15,102,967.03, consisted of municipals of the state of Minnesota, certificates of indebtedness issued by municipals in Minnesota and warrants issued by municipals in the state of Minnesota?

A. I have no idea.

Q. Will you inform yourself on that?

A. We have no way of informing ourselves. The banks do not report those separately to us.

Q. Are banks authorized to purchase industrial bonds except those that are secured by real estate mortgages?

A. I am not quite certain whether they are or not.

Q. Do you know whether or not that item includes a large number of municipal bonds?

A. I do not.

Q. Can you inform yourself of that?

A. No, sir, I couldn't.

Q. In the detailed reports of the companies are not their properties classified?

A. In our examinations the Examiner would classify, possibly.

Q. You examine the banks how often?

A. Twice a year.

Q. So the records of your office do show just how much of that item is included under the heading of municipal securities?

A. Well, they do, yes.

Q. Will you please ascertain that and come here this afternoon and let us know?

A. Why, it would be a pretty big job to have to pull out all the examination files and to tabulate 1100—

Q. I won't ask you to do that, but I would like you to tell us, if you could give it in percentages, whether 50 per cent of that or 75 per cent or 90 per cent. You have given us an estimate of the number of stockholders. If you can,

go back to your department and inform yourself upon that point so that you can give us a fair statement, and I will be entirely satisfied, and I have no doubt counsel will on the other side.

IRA C. OEHLER,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Oehler, you reside in St. Paul?

A. Yes, sir.

Q. Are you an officer of the Investment Service Company of this city?

A. Yes, I am vice-president and secretary.

Q. That is a corporation organized under the laws of Minnesota?

A. Yes, sir.

Q. With a capital stock of \$100,000?

A. Fifty thousand.

Q. The stock of that company is held by citizens of Minnesota, is it?

A. Yes, sir.

Q. And what is the general business of the company?

A. As the name indicates, it is to assist people in their investments. We make some mortgage loans; we buy bonds for our customers and we advise them generally regarding their business affairs, and that has got to be the principle part of the business.

Q. You deal in mortgages yourself?

A. The company itself deals in mortgages to some extent, yes, sir.

Q. Do you deal in loans on collateral security?

A. Only in rare cases as a broker. We don't buy collateral loans, and sell them ordinarily. We have a customer for them before we make them.

Q. Can you give us a statement which will be approximately correct of the amount of mortgages secured by real estate in the state of Minnesota and owned by individual citizens of Minnesota which were outstanding on the 1st day of May, 1921, and which had been negotiated by your company?

A. Since I was served with subpoena I had a tabulation made of that, and I find we have a little over \$1,100,000 such mortgages outstanding on May 1, 1921.

Q. Prior to the organization of the Investment Service Company, you were secretary, I think, of the Northwestern Trust Company, were you not?

A. Yes, sir.

Q. And had been with that company for a great many years?

A. Yes, sir.

Q. Did the business of that company bring you in more or less contact with financial affairs of the city of St. Paul?

A. To some extent.

Q. And you had a knowledge of banking transactions?

A. Some.

Q. And of the general use of money for investment in this city?

A. Yes, sir.

Q. During that period state whether or not it was the custom of the wholesale and large retail houses to borrow money upon their unsecured promissory notes through brokers?

A. Many of the St. Paul jobbers did that.

Q. That is, they negotiated their notes outside of banks to brokers ?

A. Yes, sir.

Q. Those brokers in turn sold that—

A. Yes, sir.

Q. Do you know whether or not that practice has continued to the present time?

A. I have not kept in touch with it for the last few years?

Q. Were you sufficiently in touch with it during the time you were secretary of the Northwestern Trust Company to be able to form an estimate of the amount or the aggregate amount of such loans?

A. No, sir.

Q. Are you able to state whether dealings of that sort were extensive or only slight?

A. I know they were extensive.

Q. And when you say "extensive," what do you mean?

A. That it ran into millions of dollars. For example, a corporation might owe a million dollars on its unsecured notes and would only borrow one or two hundred thousand dollars from its own bank and borrow the rest of it through brokers.

Q. You had occasion during that time to see the reports of the various wholesalers to the banks, see their statements?

A. No, sir, we had no occasion to do that.

Q. You have no hesitancy in saying that the traffic in those notes in this city amount to millions?

A. I believe it did.

Q. Each year?

A. Each year, yes, sir.

Q. As a part of the business of the Investment Service Company, do you manage estates of deceased persons?

A. The company does not, no, sir. Col. Cole and I do personally. The company has no authority to so act.

Q. There are managed in that office by your organization some very large estates, are there not?

A. Yes, sir.

Q. Would you have any objection to giving us the aggregate investment of those estates, the minimum, in Min-

nesota real estate mortgages and United States and municipal bonds?

A. Roughly, I would say all together, a million and a half of such securities.

Q. And the beneficiaries of those estates are practically individual citizens in Minnesota?

A. Some of them are.

Q. A considerable proportion of them?

A. Possibly half of them or more.

CROSS EXAMINATION

By Mr. Ryan:

Q. These mortgages which you say your company had put out to May 1, 1921, were they mainly city or farm mortgages?

A. Both. Possibly about half of each; possibly more farm mortgages; farm mortgages probably more than half.

Q. When did you sever your connection with the Trust Company?

A. In December, 1914.

Q. Your testimony in reference to the brokering of notes of jobbing houses related to that period?

A. Well, since then we find some investments for country banks, and we still have offerings of commercial paper from time to time, and I have kept in touch with that for a while, but lately—

Q. Are you able to state that in 1921 and in 1922, to your knowledge, there was any of that brokering of jobbing house notes in any appreciable amount?

A. I can't say as to the amount. I know that those things were offered, but I wasn't in touch with the details at that time or the amounts.

Q. You only know, as a matter of general experience, that the business existed?

A. Yes, sir.

Q. Without knowing whether it was large or small?

A. Yes.

Q. In 1921 and 1922?

A. Yes.

Q. In respect to those loans brokered by jobbing companies, as you have testified, wasn't there some reason for that, in that those jobbing companies would exhaust their credit at the bank and they would be compelled to resort to other sources for their borrowing?

A. I wouldn't be able to say that any St. Paul jobbing houses had exhausted credit or reached the limit in all of the St. Paul banks. They might have reached their limit in one bank.

Q. That would be true, that they would readily reach their limit in the bank with which they did business?

A. In a particular bank, but if they were doing business with a number of banks, they might not exhaust it; it might be a matter of economy or some other reason for brokering their paper.

Q. Do you know that that limitation upon the loaning power of those concerns was not a factor in those transactions?

A. I don't know that it wasn't.

G. W. GOLD,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Gold, where do you reside?

A. Redwood Falls, Minnesota.

Q. And what is your business?

A. I am vice-president of the Southern Minnesota Joint Stock Land Bank.

Q. Under the laws of what jurisdiction is that bank organized?

A. United States.

Q. How long has that bank been organized?

A. It was organized on the 25th of June, 1919.

Q. How many banks of that character have been organized in the State of Minnesota?

A. There are three which have been organized up to this time in Minnesota. There have been three banks organized outside of Minnesota which are authorized to do business in Minnesota.

Q. What is the capital stock of the Southern Minnesota Joint Stock Land Bank?

A. At the present time it is \$1,800,000.

Q. Where is that stock held?

A. It is held by stockholders scattered—I believe our last figures showed—in twenty-one states.

Q. What proportion of the stock is held by individual citizens of Minnesota?

A. About 30 per cent.

Q. What character of business is transacted by this bank?

A. The law provides that we can invest in two things; first mortgages, farm loans, and government securities.

Q. What were the holdings of that company in farm loans upon Minnesota farms May 1, 1921?

A. I might say in that connection, that there was a bank organized in Minneapolis, known as the First Joint Stock Land Bank of Minneapolis, which we consolidated with our bank as of June 1st this year, 1923, and in giving those figures I will give you the figures covering the Minneapolis bank and the Southern Minnesota, is that what you want?

Q. Give them together.

A. I can give that separate to you. The Southern Minnesota had \$1,700,000 of farm loans, in round figures, on May

1st, 1921, in Minnesota, on Minnesota land. The First Joint Stock Land Bank of Minneapolis has \$1,850,000 of loans, of which about \$150,000 were in Iowa, leaving about \$1,700,000 in Minnesota lands.

Q. Now, what was the situation in 1922?

A. The Minneapolis bank had approximately two millions of loans in Minnesota, and the Southern Minnesota Bank had about \$2,100,000 in Minnesota.

Q. What is the holding of the Southern Minnesota Joint Stock Land Bank now of mortgages in Minnesota?

A. We have twenty-six million of mortgages, of which about eighteen millions are in Minnesota?

The Court: Farm mortgages of all kinds?

Witness: Yes.

Q. Your method of operation is that you issue bonds?

A. Yes, sir.

Q. You do not sell your mortgages?

A. No, these mortgages are hypothecated with the registrar of the farm loan board, who is located in St. Paul, and he issues his bonds par for par.

Q. The bonds being registered there, he issues bonds, and those bonds are sold by him?

A. Yes, sir.

Q. How many of those bonds have you now outstanding?

A. \$25,650,000.

Q. Where are they held?

A. It is rather difficult to tell that because the bulk of those bonds are coupon bonds. We have no way of knowing just who holds them, although I would rather judge that the big percentage of those bonds are held in Chicago and east of there, by the way the coupons come in for payment.

Q. Are any of them held by individuals in Minnesota?

A. Yes.

Q. What proportion?

A. As nearly as I can judge from the coupons, the way they come in for payment from various banks, there would be approximately a million and a half.

Q. They are tax exempt bonds and so do not appear upon the tax return?

A. Yes, sir.

Q. State whether or not the taxing authorities of the State of Minnesota treat your bank as a National.

A. They do.

Q. The same tax is imposed upon the shares of stock of your bank that is imposed upon the shares of stock of other National Banks in the state?

A. Yes, sir.

Q. And you have an action pending in Hennepin county at this time with reference to those taxes?

A. Yes, sir.

The Court: Your stock is taxed the same as other stock of National Banks?

Witness: They are attempting to do that.

CROSS-EXAMINATION

By Mr. Ryan:

Q. How do you place your loans, Mr. Gold?

A. These loans are ordinarily made through a local banker. An applicant comes in to his local banker, and the banker makes out the application and submits it to us. We send a federal appraiser out, who is appointed by the Farm Loan Board at Washington, to check this loan up. He comes in and he makes his recommendations as to what the amount of his loan should be, and this is checked over by our loan committee and approved for a definite amount, that is, the size of the loan which we will make if it is acceptable to the borrower.

Q. Is the local banker compensated in any way for the services he performs?

A. Yes, sir, we pay him one-half of one per cent commission.

Q. Is that your only method of procuring applications for loans?

A. Yes, sir. If an applicant comes into our office from away and applies for a loan, we will take the application, but we will give the local banker credit for having it come in to him and having him close up the loan, and pay him the commission.

Q. At what rate of interest do you exact on your Minnesota loans?

A. Six per cent. These loans are made on the amortizing plan. The borrower pays seven, which automatically pay that loan off in thirty-three years.

Q. Is there any other concern offering money to loan on that same basis?

A. Yes, sir; there are several life insurance companies here.

Q. Anybody else?

A. Well, there is the Federal Land Bank at St. Paul, and then there are other joint stock land banks.

Q. The Federal Land Company and some insurance companies?

A. Yes, sir.

Q. That sort of loan is limited to these companies, is it?

A. Yes, sir.

Q. Has your rate of interest changed from the time your bank was organized until the present time?

A. No, sir.

Q. The rate that you exacted. You fix the rate of interest?

A. It is limited by law, at six per cent by the federal law.

Q. And you have kept it as high as six per cent?

A. Yes, because we are allowed a certain spread between our bonds and our mortgages and we have not been able to sell bonds at less than five per cent.

Q. And how are your bonds sold?

A. They are sold through syndicates in the East, Chicago and New York.

Q. You don't attempt to sell them here?

A. No, sir.

Q. What do you mean by selling them through a syndicate?

A. Well, large brokerish houses and banks in Chicago or New York.

Q. I mean in detail, you have a certain amount of bonds to dispose of on the market?

A. Yes, sir.

Q. And you will offer those bonds to a particular syndicate, will you not?

A. Yes, sir.

Q. Do you negotiate over the terms?

A. Usually.

Q. And arrive at the basis at which you will sell them to them, or do they agree to undertake to sell them for you and exact a commission?

A. We sell them to them at a certain price and specify what price they go to the public.

Q. You take those to some eastern syndicate because usually it is necessary to do so, isn't it?

A. The Minnesota Loan & Trust Company was in on two syndicate offerings of our bonds in Minneapolis, but the market for that type of investment is so limited in Minnesota that the distribution is not very large, and we have to go to eastern centers to get the real distribution of those bonds.

Q. When you are speaking of the necessity of going to eastern centers for distribution of a large amount, you

speak of the sum that that has now reached for these many years, this total of twenty-five million?

A. Yes, sir.

Q. And about what size do you syndicate those bonds?

A. Last winter we made two offerings of five millions and one offer of two and a half millions.

Q. Now, you find that when you offer bonds in that amount, five million at a time and two and a half million at a time, in order to get those distributed at the hands of the investor, you have to go to a large eastern syndicate?

A. Yes, sir.

Q. And they fix the price at which you will pay, and you fix the price at which they will sell them?

A. Yes, sir.

Q. And the Minnesota investment or purchasing power of the individuals in taking up bond issues of that size is not a factor in determining their price or where they shall be disposed of?

A. It would be if the Minnesota investor was educated to that type of investment.

Q. But as the situation exists, the Minnesota investor, in respect to your bonds, is not sufficiently important so that you are enabled to sell these bonds here, and have to dispose of them in the East, and from there they are sent all over the country?

A. It has been in our bank. I understand there is a bank in Minneapolis which has disposed of a number of their bonds locally.

Q. There is another bank in Minneapolis?

A. Yes, sir.

Q. Other than the one that you have consolidated?

A. Yes, sir.

Q. And that bank has been able to put their bonds out to individuals there?

A. Yes, sir.

Q. Do the banks here buy any of those bonds?

A. I couldn't say whether those bonds are held by any banks here or not.

Q. You don't know what the distribution has been of the bonds of this other farm loan bank?

A. No, I don't.

HOMER B. CHASE,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Chase, where do you live?

A. St. Paul.

Q. What is your business?

A. Statistician for the insurance department.

Q. Do all insurance companies authorized to transact business in Minnesota report to the insurance department of this state?

A. Yes, sir.

Q. You have their sworn reports?

A. Yes, sir.

Q. Have you made any tabulation with reference to the insurance companies transacting business in Minnesota organized under the laws of this state?

A. Yes, sir.

Q. What I think you call domestic companies?

A. Yes, sir.

Q. With reference to their holdings of securities?

A. With reference to their total admitted assets.

Q. Their holdings and securities are in their assets. Will you produce that tabulation?

Deft's. Ex. F, being tabulation referred to, introduced in evidence without objection.

Q. Are you sufficiently familiar with the assets of those companies to state what proportion of these assets consist

of mortgage loans on real estate in Minnesota, and bonds, municipal, United States bonds?

A. Practically the entire amount of assets.

The Court: Mortgage loans on Minnesota lands, United States bonds and municipal bonds in Minnesota?

Witness: Well, I am not positive as to the municipal bonds exclusively in Minnesota, but the majority of them are.

No cross-examination.

Recess until 2 P. M.

G. W. GOLD,

recalled on behalf of defendant, testified:

By Mr. O'Brien:

Q. Prior to the organization of the Southern Minnesota Joint Stock Land Bank were you interested in any other investment company?

A. Yes, sir.

Q. Was that company in existence in 1921?

A. Yes, sir.

Q. When did it go out of existence?

A. That company is still in existence with a change of name only since last March.

Q. Were you an officer of that company?

A. Yes, sir.

Q. In 1921?

A. Yes, sir.

Q. And what office did you hold?

A. Secretary.

Q. Do you know anything about the dealings of that company in Minnesota mortgages?

A. The main business of that company was making a sale of Minnesota mortgages, first mortgage loans on farms.

Q. And on the 1st of May, 1921, what were the outstand-

ing mortgages sold by that company on Minnesota property?

A. That company had approximately four millions of loans on their books for the past five years.

Q. That covered 1921 and 1922?

A. Yes, sir.

Q. To whom were those mortgages sold?

A. The most of them were sold to individuals and savings banks in the Twin Cities; in Minneapolis mostly, to individuals around the country locally and private investors, and some savings banks in Minneapolis.

Q. What proportion were sold to individual citizens of Minnesota?

A. About half of them.

The Court: These were Minnesota mortgages?

Witness: Yes, sir.

Q. I believe you said that bonds of the Land Bank in Minneapolis were sold to citizens in Minneapolis?

A. The last time I saw the executive officer of the First Trust Joint Stock Land Bank, he informed me that they had sold approximately four millions of bonds over the county in Minneapolis to Minneapolis citizens, bonds of the Joint Stock Land Bank.

J. D. ARMSTRONG,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Armstrong, you reside in St. Paul, Minnesota?

A. I do.

Q. And what position do you occupy with the Merchants Loan & Savings Bank?

A. Merchants Trust & Savings Bank. I am vice-president and trust officer.

Q. And as such are you familiar with the dealings and transactions of that company?

A. Fairly so. I try to keep so.

Q. Will you describe the general course of business of that company in dealing in real estate mortgages?

A. Well, they have a mortgage loan department. We take loans on city real estate and farm lands. Generally speaking, on the city mortgages we secure them ourselves, they are made on personal application at the office. So far as farm loans are concerned, we secure them, as a general thing, from our correspondents, which are country banks; that is, the application comes through the country bank and is sent down to us to look it over. If we accept it or decline it, fixing, at the same time the amount of the loan that we are willing to make; if we are not willing to make the amount applied for; very much the same course is followed with respect to city mortgages except, as I say, most of the applications are made by persons directly to the bank, although we do get some from the smaller banks in the outskirts of the city, and also from some real estate men.

Q. And do you sell those mortgages?

A. Why, they are kept for sale, yes. We sell them from time to time, customers that come to the bank and want a farm or city mortgage, and our salesmen will take our list—

Q. Describe those customers, as to what class of persons they are.

A. Oh, they are very largely individuals.

Q. Individual citizens?

A. Individual citizens, yes. Then, of course, in addition to that, our bond and mortgage salesmen will go out and solicit purchases from individuals, and also from savings banks and other institutions.

Q. In a case where an individual calls at your place of business for the purpose of making an investment in a mort-

gage, you furnish that individual with a list or some statement of some mortgages?

A. Yes. We have our mortgages which are for sale listed in a loose-leaf book, each offering—a sheet covering each offering, showing the character of the property, the valuation as fixed by our appraisers—well, a description of all the elements perhaps that are necessary to enable a man to determine whether he regards that mortgage as a desirable investment or not.

Q. Will you, if you can, state the aggregate amount of mortgages upon Minnesota real estate outstanding on the 1st of May, 1921, which were sold by the Merchants Trust & Savings Bank to individuals, citizens in Minnesota, in the manner you have described?

A. I have the amount outstanding tabulated, Mr. O'Brien. On June 1, 1921, we had outstanding mortgages which we had sold, covering Minnesota farm lands and city property and which were unpaid, aggregating \$3,308,500. Now, I cannot state what proportion of those mortgages were held by individuals or that were held by corporations or institutions. It would be rather difficult to arrive at that for the reason that they may change ownership after we have sold them, but we are able to keep a fairly close track of them by keeping track of the coupons, the mortgage interest, as they are presented. I think it is safe to say on an estimate that 80 per cent of those mortgages as the face amount of mortgages are held by individuals at the present time.

The Court: Residents of Minnesota?

Witness: Yes.

Q. Now, you also deal in bonds?

A. Yes, sir.

Q. Buy and sell bonds. What character?

A. Oh, almost every character. Public utility bonds, standard railroad bonds, bonds on industrial plants, and in

fact almost any bonds that we consider safely secured and worthy of offering to the public.

Q. Will you describe the way you would handle a large bond issue by some corporation, the bonds being secured by a trust deed?

A. We have floated a number of bond issues of that kind. Of course, there is the application made for a loan, and that is followed by an investigation. The investigation covers the character of the property offered as collateral, not only its cost value and replacing value, but also the situation as regards the business and earnings of the company, and the character of the men who have charge of the company's business. That investigation is rather exhaustive, and the matter takes some time. After that is done, why the investigation—or before that time, perhaps the rate of interest which we are willing to accept, the rate of commission is fixed if the affairs of the company meet our requirements, and, of course, if they do not, why we refuse to take it. After that is done, if everything is to our liking, we take the bonds and pay for them and put the trust deed of record, and then offer the bonds through our salesmen or through advertisements in the public press, by bond circulars which are sent out to a list of bond buyers.

Q. You maintain a mailing list of possible purchasers?

A. Yes, sir.

Q. Are those bonds ordinarily offered to individuals?

A. Sold to individuals.

Q. Yes.

A. Why, I should imagine they run about the same as our sales of mortgages. Occasionally we will have some concerns that will take almost the entire issue or the entire issue, but 75 or 80 per cent of them go to individuals.

Q. Could you give us an idea of the aggregate of bonds now outstanding secured by trust deeds to the company?

A. The bonds outstanding and secured by trust deeds to the company covering property in Minnesota is included in the figures which I have already given.

Q. You consider those as real estate mortgages?

A. Yes. Primarily that constitutes the greater portion of the security.

Q. How about municipal bonds?

A. Municipal bonds are bought from the municipality. We have two men who spend most of their time attending to bond sales of municipals throughout the state, and they are bought direct from the municipal officers having charge, county commissioners, etc., and they are brought in in the same manner and sold. I should imagine that the percentage of municipal bonds which are sold to institutions and corporations is a little in excess of the amount of mortgage bonds which are sold to corporations and institutions.

Q. To what extent?

A. Why, I wouldn't like to say without checking it up.

Q. Are they extensively invested in by individuals?

A. Yes, very largely. Trustees take a large number of municipal bonds, taken by men whose incomes are sufficiently large to make the purchase of the tax exempt security, desirable investment.

Q. What is the capital stock of the company you speak of?

A. \$500,000.

Q. And that is held by the stockholders of the Merchants National Bank?

A. Yes, sir. Four shares of the Merchants National Bank stock carries with it one share of the Merchants Trust & Savings Bank.

Q. Are you familiar with the holdings of the stock in the Merchants National Bank so as to be able to say what proportion of it is held by Minnesota citizens?

A. I couldn't say; I don't know; I have never checked it up.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Mr. Armstrong, are the shares of the Trust and Savings Bank so held that they must be transferred with the Merchants Bank stock?

A. They are, Mr. Ryan. The stock is held in trust by three trustees for the benefit of the stockholders of the Merchants National Bank.

Q. And your company is a trust company and savings bank combined?

A. Organized under the laws of Minnesota.

Q. Now, you say that as to farm mortgages which you have procured, they are mostly gotten through applications made to local banks, and that those local banks throughout the state include national banks as well as state banks, do they not?

A. Yes, they do.

Q. Now, in loaning money on real estate in the city, do any of those applications come from or through the Merchants National Bank?

A. No, I would not say so. They may send people down who are up talking with them to us to borrow money on real estate. And let me make clear the function of the country banks. Those mortgages are all taken on our blanks by the country banks; that is, they simply write in to us, sending in an application saying that some farmer doing business with them is desirous of securing a loan on his farm, and they make out an application for that loan which is sent in to us and scrutinized, and if we feel that the amount asked is reasonable and the property good security, then we make out the mortgages and notes and send them back

to the country bank, who tends to the signing of the notes and the execution of the mortgages, and the checks are then sent up when the mortgages and notes are received.

Q. Do the mortgages run to the local bank or—

A. No, they run, in nearly all cases, to the Merchants Trust & Savings Bank. There may be some mortgages occasionally which run in the name of the local bank which they are carrying in their assets and which they desire to sell. For instance, they might keep a portion of the deposits invested in mortgages of that kind or a portion of their capital.

Q. In respect, then, to those farm mortgages, you only get those which the local banks do not desire for themselves?

A. I wouldn't say that, Mr. Ryan. We get some in other ways, but the capacity of a local bank, a bank in the ordinary farmers' town, to carry any great amount, it is too limited to carry any great amount of mortgage.

Q. You get these involving investments over and above which they were able to make?

A. Yes, I think that is a fair way to put it, at least I hope that is the situation.

Q. Well, it would seem that that would be the situation. Now, as to your relations with the Merchants National Bank, there you think on city loans you might get such application for loan as would be presented to the Merchants National Bank, those officers would refer those applications to you for execution and completion, would they not?

A. Well, nearly all the applications are made to us direct, but it may be that some man who is personally acquainted in the Merchants Bank among the staff there would go to him and speak to him with regard to a real estate loan, and, of course, he is referred down to the Trust Company. In other words, the function of a commercial bank is to make short-time loans to merchants and people engaged in business. I would not like to say what propor-

tion of loans to a national bank was secured by mortgages, because I do not know, but as a general thing, the amount of loans which they make on mortgages is a very small portion of the amount of money they have outstanding in commercial paper.

Q. The business, then, which you do at the Trust Company, you feel is quite a different business than is done at the bank?

A. Yes, to this extent, their business is purely commercial banking.

Q. And isn't that quite true of all of the banks of St. Paul, the national banks, that their business is a commercial business, and it is a business of quite a different type than the business conducted by the Trust Companies?

A. Well, the Trust Company loans entirely on collateral. They are all principally mortgage security. I think our loans run for a longer period of time. The National Bank or commercial bank loans on short-time paper.

Q. That is, at least what they all seek to do, is it not?

A. I should imagine so.

Q. They want short-time paper and loans of a commercial character, and you want long-time investments?

A. We are loaning money for the purpose of selling the mortgage; they are loaning money for the purpose of giving credit to the people who want to borrow.

Q. And isn't it your judgment that the situation existing there at the Merchants National Bank and the Merchants Trust Company, particularly, is one in which one banking association is not in competition or in rivalry with the Trust Company, but one supplements the work of the other?

A. That is rather a hard question to answer. We work together, Mr. Ryan, if that is what you mean. To a certain extent one supplements the other.

Q. Well, you don't feel that it injures the business of the national bank in that there are companies existing which

make long-time loans, create securities and put them in the hands of individuals desiring to invest their funds?

A. Well, there is a field for both of us or else we would not be existing.

Q. And do you believe that there is any appreciable conflict between those engaged in the ordinary commercial bank business and the company engaged in the permanent investment business?

A. Oh, I wouldn't say that there is a conflict. Of course, there is competition between them in some ways. It all comes down, after all, to the desirability of either taking a long or short loan, that is, the man borrowing for a short term or borrowing for a longer term.

Q. Well, can you think of any tangible way in which the business conducted by your Trust Company adversely affects the business conducted by the Merchants National Bank, for instance?

A. I wouldn't say that our business was adverse to their business in any way.

Q. Can you think of any tangible way in which the business conducted by your company adversely affects the business of any national bank?

A. Oh, generally speaking, I should say not.

Q. That would be likewise true, that it would not adversely affect the National Banks of the state outside of St. Paul?

A. No, I wouldn't like to say. I don't know how the country banks run their business.

Q. It is also true, is it not, that these mortgages that you put out, and the bonds which you sell, go into the hands of individuals who put into them their surplus funds and who buy these mortgages and bonds, not with a view to reselling them at a profit, but with a view to deriving from their excess funds the interest—

A. They buy them for investment, Mr. Ryan, I think, or as investments.

Q. I use the word "investment", and I think you do, as indicating a purpose to hold them until maturity rather than for the purpose of selling them at a profit.

A. Well, they buy them for the purpose of securing the income from them rather than buying them as a speculation.

Q. And you can say that that is almost wholly true, that a purchase for a speculation or a purchase with a view to resale would be an accidental—

A. No, I wouldn't say that.

Q. Or an insignificant one?

A. In mortgages I think that perhaps is largely so, but bonds, you will find institutions sometimes that will have the amount of cash on hand which they might want to reserve for certain purposes. They might buy bonds in order to hold those funds and have them earning something until the time comes when they want to use the—

Q. These purchases which you now refer to are usually purchases by corporations?

A. Yes, but occasionally you may find the same thing in individuals.

Q. Occasionally an individual business man, who has a large business and who has some idle capital in his business, may buy bonds?

A. Buy bonds as a temporary investment.

Q. But that particularly in cases of individuals would be insignificant in comparison to the bonds sold?

A. Well, I don't know that it would be insignificant; it would be a small portion.

Q. The business of the Trust Company, in dealing in farm mortgages and in bonds, is not appreciably different, is it, than such investment companies as the Wells-Dickey Company, which I presume you are familiar with?

A. Yes, I would say that they more nearly resemble the Wells-Dickey Investment Company. The Wells Company is purely an investment company.

Q. That part of your business to which you have referred, the part of which you deal in farm mortgages and in bonds, is not to be differentiated from that business of the Wells-Dickey Company, which deals in farm mortgages?

A. I should imagine, as far as their taking mortgages were concerned, or as far as their buying bonds and selling bonds were concerned, that our business runs along a good deal the same lines.

Q. Take in 1921 and 1922, particularly, there was no difficulty in loaning money, was there?

A. There is never any difficulty in loaning money.

Q. Loaning money out, and that was particularly true during those two years, there was a greater demand for money than the loaning capacity of the banks and the trust companies could supply, was there not?

A. Well, I don't know about that. After all, the loaning of money is very largely a matter of security and a matter of confidence, and the character of the man who wants to borrow. There are some men whose obligations we would not care to have under any circumstances, and perhaps others that we would be willing to take their obligation, because you know that if they live they will work it up. There are always plenty of applications for borrowing money.

Q. As you have indicated, the rate of interest is not the most important factor?

A. Well, the rate of interest fluctuates.

Q. For instance, if I came to your Trust Company and offered to pay you a large rate of interest, that would not induce you to loan it to me?

A. No; that is, I would not loan it to you without that inducement.

Q. The factor of security is the main consideration, is it not, for loaning that money?

A. I think that is peculiarly true of the securities you take for the purpose of resale because you assume a moral responsibility at least for what you are offering, and we would not loan money and offer those bonds unless we were reasonably certain that the interest would be paid and that they would be paid on maturity. We could not afford to do otherwise. After all, the question of interest rate is a matter of what the going rate is and the question of on what basis the purchasers are willing to buy those bonds.

Q. Now, take during 1921 and 1922, was there any appreciable fluctuation in the going rate at which money was loaned on mortgage security or land security?

A. Yes, there was. I would say that during 1922 we got a higher rate of interest than we are getting now, and possibly that we were getting in 1921?

Q. 1921 and 1922 were abnormal years in the banking business, were they not? The rates of interest were higher than they were in years preceding?

A. We were loaning money on farm mortgages in southern Minnesota at five per cent at one time, and there have been times when they paid seven per cent.

Q. Well, do you know whether there was any great fluctuation in 1920 and 1921 in the rate of interest payable on commercial loans to the banks?

A. I think the rate was higher in 1922 than it was in 1921; that is my recollection. We do so little commercial loaning. After all, the rate varies with individuals.

RE-DIRECT EXAMINATION

By Mr. O'Brien:

Q. Mr. Armstrong, money is a commodity, is it not?

A. I think so.

Q. One man takes an investment in the shares of stock of a national bank; another man makes an investment in the shares of stock of a state bank; another man invests his money in a manufacturing concern; another man makes an investment in the capital stock of a commercial concern; and some one else will purchase mortgages and invest his money in mortgage security, others in bonds, municipal bonds and government bonds; is that all true?

A. Entirely so.

Q. Now, is there not a certain amount of inter-locking of expenditures between all of those investments?

A. There must of necessity be, because they all involve the expenditure of money.

Q. If the public or borrowers could obtain money upon real estate mortgages at two per cent, would it be possible for the banks to maintain their rates or the rates of five or six or seven per cent?

A. Obviously not.

Q. You should say not?

A. That is, if a man could borrow money at two per cent, certainly the banks would not be able to exact six and seven per cent from a man who has sufficient real estate to borrow on mortgage.

Q. So, eliminating investments in industrial occupations, and confining your statement to investments in either shares of stock or purchase of bonds or mortgages where the return is to be interest upon the money, is not all that money in competition?

A. Always.

Q. Necessarily?

A. It must be.

RE-CROSS EXAMINATION

By Mr. Ryan:

Q. That is true in the sense that all money of every kind is in competition everywhere, as in every sort of an investment?

A. Why, I think so.

Q. Everything of value competes with everything else of value?

A. A man who has money is always seeking something to bring a return on and it is all in competition so far as the buying of securities or the loaning of money out.

Q. And a man who is buying real estate is affecting that money which is being loaned on real estate, in some measure, is he not?

A. Well, I don't know about that. Real estate is pretty slow.

Q. There isn't any limit to the proposition that—you say that money is always in competition with other money seeking investment. You can't stop and say at any point—

A. No. Real estate, as a general thing, they are either buying it for the purpose of improving it or else buying it as a speculation; that is, real estate is more or less of a permanent investment always,—put real estate investments in rather a different class from stocks and bonds and mortgages.

Q. If I buy the Commerce Building across the street, that tends to set figures on valuations all about there, does it not?

A. Yes.

Q. In the same degree?

A. Mr. Ryan, you are not borrowing money, you are buying it.

Q. This is the next step I am getting at. The man across the street is borrowing money. The question of that

loan is going to be affected by this sale of real estate across the street, is it not?

A. It might be. That is, the value of the money he pledges—the security that he pledges might be affected by the market value of the property in the vicinity, and your market value might perhaps be affected or the value of your real estate by the sale of an adjoining or contiguous property.

Q. So that the general proposition of competition would extend even to that extreme?

A. Yes; not to the extent that it would in making loans of money.

Q. It is not so appreciable. It is true that the man who makes an investment in the shares of stock of a railway company affects the investments in shares of stock of every other kind of a corporation?

A. I don't know as it affects—it probably takes that particular money out of the market for investment.

Q. It takes it out of the market?

A. Yes, sir.

Q. That would be true. You say that it may be said that the money invested by an individual in a farm mortgage comes in competition with money which a man may invest in a share of stock in a National Bank, which is just as far away, isn't it?

A. Well, that is getting pretty much into the realms of theory. Of course, any money which is invested in any security for the present time is out of the market for the buying of other securities.

Q. And that is the extent, is it not, of the competition to which you referred?

A. Well, you are taking extreme instances. Of course, money is always looking for a chance for investment. At times there is more demand for money than there is money to supply it. We have seen those times here. The Federal

Reserve Bank, of course, added very largely to the loaning capacity of banks, but generally speaking, there is always money seeking fields for investment.

C. W. GORDON,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Gordon, you reside in St. Paul?

A. Yes.

Q. And you are president of the corporation of Gordon & Ferguson?

A. Yes.

Q. What is the business of that corporation?

A. Manufacturing, selling of sheep-lined coats, furs, hats, etc.

Q. In the conduct of your business are you required to borrow money?

A. Yes.

Q. And you are also a director of the First National Bank, Mr. Gordon?

A. Yes.

Q. How long have you been connected with the corporation of Gordon & Ferguson?

A. As an official?

Q. Well, in any capacity?

A. Twenty-one years.

Q. As a director have you been familiar with the commercial situation in St. Paul generally?

A. Yes.

Q. And to some extent with the condition of the other commercial houses in St. Paul?

A. Yes.

Q. And do you know the practice generally of those houses to borrow money?

A. I think so.

Q. Now, from what sources do the commercial houses of St. Paul, including your own, Gordon & Ferguson, borrow money?

A. They borrow of the banks here, banks in New York and Chicago, through commercial brokers. It is the habit of our corporation, when they need money, to borrow it where they can get the best rate, the best terms.

Q. It is the practice, is it not, for each established commercial house, to have a definite line of credit in one or more banks?

A. Yes, in the banks that they do business with, that is, the banks that they deposit with.

Q. And the corporation of Gordon & Ferguson has such a line of credit?

A. Yes.

Q. State whether or not it is the practice to exhaust that line of credit before borrowing money through commercial brokers that you spoke of?

A. Speaking for ourselves, as a general thing, no, because we borrow our money where we can get it the cheapest, and as a rule, when we are borrowers, we can borrow to better advantage through note brokers or through our bank in the East.

Q. Are there note brokers in Minnesota engaged in that business?

A. Yes.

Q. How many concerns do you know of in Minnesota that are engaged in the business of—

A. In Minnesota?

Q. Yes.

A. At least two.

Q. That are operating here?

A. Yes.

Q. Do you know the custom of those brokers with reference to recalling the paper so taken?

A. They buy our paper and sell it to the banks—country banks, or anybody that wants it.

Q. Would you have any objection to stating the amount of money the corporation of Gordon & Ferguson borrowed through brokers during 1921?

A. I can give you the approximate amount; will that do?

Q. Yes.

A. About a million dollars.

Q. And during that same year, how much money did you borrow from the banks in Minnesota, that is, the corporation?

A. About \$200,000.

Q. What was the situation with reference to 1922?

A. I think in 1922 we borrowed a little less of the brokers and a little more of our banks.

Q. What do you mean by a little less?

A. Oh, \$200,000 less.

Q. And how much more from the banks?

A. About \$200,000 more. That was not all in St. Paul, though; some of it went to New York.

Q. That would be \$800,000 from brokers and \$400,000 of the banks during the year 1922?

A. Yes.

Q. And on the 1st day of May in each of those years, could you give us an idea of how much of that was out?

A. Well, it will be just an approximation. It wouldn't be very much. I should say our total loans, on the 1st of May were around \$600,000.

Q. And in the proportion between brokers and the banks that you have given?

A. Well, that would vary; it would depend on where we got the—

Q. The 1st of May, 1921, or the 1st of May in each year?

A. Approximately the same.

Q. In each year?

A. Yes.

Q. Are you able to give an approximation of the amount of money that is loaned through brokers to commercial houses in the State of Minnesota each year?

A. No. It is too much that I wouldn't attempt to give.

Q. Would you attempt to give the minimum?

A. It is easy around forty million dollars, maybe more.

Q. That is outside of the loans made by banks?

A. Oh, yes.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Mr. Gordon, you are a director of the First National Bank?

A. Yes.

Q. And a stockholder of the bank?

A. Yes.

Q. Of course, you are interested in the success of the bank?

A. Yes.

Q. Your company carries its deposits with the bank?

A. Part of them, not all of them.

Q. You do carry deposits in some other bank than the First National Bank?

A. Yes.

Q. Is there any special reason for that, for carrying deposits with the other banks?

A. We want to have bank clients. What I mean, lines of credit in more than one bank, and we want to have the competition of each bank against the other, so we carry deposits in three or four banks—three banks at the present time, so when we want money we can go to those three banks,

plus the note brokers, and get quotations for the amount that we may want.

Q. This is true in the case of the First National Bank. Would your line of credit would be necessarily limited by the federal laws?

A. Yes.

Q. They would only loan you a certain amount of money?

A. Yes.

Q. And you are frequently in the market for more money than that bank may lawfully loan you?

A. I will answer that question in another way. We have a certain line at the First National Bank, for instance. At the present time we are at the peak of our borrowing and our loans are a little more than one-third of our line.

Q. That is, at the present time?

A. In other words, if we wanted \$200,000—\$250,000 of the First National Bank, if we needed it, that line, so-called, would be open.

Q. Taking these figures, I gather that in 1921 you borrowed as much as a million dollars.

A. Of note brokers.

Q. You borrowed it?

A. We borrowed more than a million.

Q. You required that much money?

A. Yes.

Q. But you couldn't have gotten that at the First National Bank, could you?

A. We could have gotten it of the banks that we deposit with, though.

Q. The First National Bank—take that singly—could not have lawfully loaned you that much money?

A. No.

Q. But the three banks with which you did business could lawfully have loaned you that much money?

A. Yes.

Q. It is ordinarily true, is it not, as a general proposition, that a house such as yours would not expect to be able to borrow money from a bank with which it did not carry any of its deposits?

A. No, that is not true.

Q. Well, that would not be true as to your concern, but it would be true as to any but a few of the very large concerns, would it not?

A. We have had in the past eighteen months several letters from banks in Chicago offering us money.

Q. I am speaking of local banks.

A. And banks in St. Paul.

Q. Others than those with whom you deposit?

A. Yes.

Q. But generally it is true, is it not—

A. No.

Q. —that a man may not expect to borrow money at a bank with which he does not carry an account?

A. No, that is not true.

Q. That would not be true as to very large concerns, I agree.

A. No.

Q. It is not generally true?

A. No. If a man's credit is good he can borrow wherever people have money to sell and want to loan.

Q. You say you borrow money from eastern banks?

A. Yes.

Q. And when you want to borrow money you make it known to the eastern banks with whom you are acquainted that you are in the market for that much money, and you make it known to your three banks with which you do business here, and in addition to that, you go to the broker?

A. We go to every place we think we can borrow money cheap, the same as we buy merchandise, exactly.

Q. Who are these brokers? Are they individuals who engage in that business or are they corporations?

A. Some of them are individuals, some of them are corporations.

Q. I understood you to say that there were two that—

A. I said there were two here in the city. There may be more.

Q. I assume that you have only described those with whom you were acquainted or that you knew of? You know of two here?

A. You want the names?

Q. No. Are the two here individuals or corporations?

A. Corporations.

Q. They are both corporations?

A. Yes.

Q. Now, on the occasions when you were procuring the loan from those brokers, what did they do with the money or with the paper that you issued, do you know?

A. What did they do with it?

Q. Yes.

A. They sell it.

Q. They sell it to whom?

A. I don't know. That isn't any concern of mine at all. I will give you an instance of that if you will allow me. Frequently I am offered paper of concerns through note brokers that I know, and if they are good and I happen to have the money, I will buy that paper. It is offered to individuals and to banks—to anybody—that these note brokers have on their lists that they know or think is desirable paper.

Q. Have you any idea how much of that goes to the banks?

A. To the country banks?

Q. Yes.

A. I should think 75 or 80 per cent of it, but I have no means of knowing. That is just my impression.

Q. But you have the impression that it is generally true that these brokers expect to split those sums and put them in the hands of banks, usually in the country, who have funds to loan?

A. Yes.

Q. Isn't it a pretty fairly accurate statement to say that so far as that loan brokerage is concerned, it operates to enable the small country banks to compete against city banks for commercial loans in the city?

A. No.

Q. That wouldn't be the result of it?

A. No, because a small country bank can write us—they do frequently—and ask for loans. It makes it easier for them of course, but it doesn't prevent their getting our paper or anybody else's paper if they want it.

Q. No, I don't say that it operates to prevent them from doing it. I say it operates to enable them to get it.

A. If they want it.

Q. In that sense, you say that 75 or 80 per cent of it finds itself into the hands of the country bankers, that the conclusion would follow that this system so works as to enable the country banks to participate in the commercial loaning in St. Paul?

A. Yes. They can buy the paper if it is offered to them, but it is purely permissive with them, they don't have to.

Q. Do those note brokers offer, as a rule, longer term loans than the local commercial banks do?

A. No, I don't think so.

Q. Aren't they more willing to take commercial paper running a year, for instance, than the ordinary commercial bank is?

A. We never made commercial paper running a year, so I can't answer that question, but I think any bank that

took paper running for a year would be in the ash-can in a very short time. Six months,—ninety days and six months are the ordinary time.

Q. You don't think that there is any difference in that respect between the willingness of a broker to take, say, the six months paper than there is on the part of the banks to take six months paper?

A. No, I don't think so.

Q. The bank more inclined toward six months paper and the broker more inclined toward six months paper. As between the two of them, isn't the commercial bank more inclined towards three months paper and the broker, on the other hand, more inclined towards six months?

A. The bank may be inclined for three months paper, but if it is after business it will have to take what is offered to them providing it is sound.

Q. But I don't think you appreciate my point, that the preference of the bank is for the three months paper, the preference of the broker is for six months paper.

A. The preference of the broker is for the best paper you can get. He couldn't lend any of it if he didn't lend it for six months, because sometimes they take it for ninety-days, but they would like ninety-day paper. We have frequent offers of brokers in New York, for instance, and in Hartford, for ninety-day paper. Banks want maturities at a certain time to meet certain obligations that they think they are going to have, and they will buy paper based on the maturing as of that particular day. At other times they would be willing to take it at six months, but you are right in this, that the majority of paper that goes through note brokers is six months' paper.

Q. You deal with the eastern banks in that competition?

A. Yes.

Q. Is it true that the rate on that paper is largely fixed by the eastern money centers?

A. No.

Q. They don't set a competitive price as to money loaned?

A. There have been times in borrowing money when the East is hard up and the West is the place, and sometimes the reverse is the case, and at other times things are equal as they are at the present time. It just depends on how eager people are for business. We had an instance of that this month. Banks wanted to loan us money; we asked for quotations and we got a better rate than we could get at our banks, and we took it somewhere else.

Q. This is true, is it not, that the money market in Minnesota is quite independent of the money market of the East?

A. No. In 1920 the money market of Minnesota was independent of the money market of the East.

Q. How about 1921 and 1922?

A. 1921 and 1922 were different years. I think each district stood fairly on its own resources. Now, you are getting into intricate banking questions, and I am a little off in my dates, but you will remember there was a time when the ninth federal district (which is this district) would loan money to, we will say, Number 6, but that was the Federal Reserve that did that to help them out; and of course in times of stress, such as we had in 1920, if you could get rid of money any where, you could then, but those things don't occur. Those are times when that only happens to us once in twenty or twenty-five years, but in the ordinary conditions of business, one section is independent of the other.

Q. Well, I was only drawing the conclusion from the statement that when there is competition between the banks in St. Paul for it and the brokers in St. Paul for it and the banks in Chicago and New York.

A. Yes.

Q. And it struck me that that meant a gathering of those concerns into a single money market, one competing against the other to loan that money to you.

A. I don't get your question yet. We go into the market, we will say, for \$100,000, and ask for quotations. It don't make any difference where they come from, the lowest quotation gets it. Does that answer it?

Q. Yes. And those quotations come from money markets of Chicago and New York?

A. No, I didn't say that. I said the lowest quotation got it.

Q. But the quotations come from those sources?

A. No, they don't. Sometimes they come right from St. Paul.

Q. I gather from your testimony that you said you asked for and got bids on money from New York and from Chicago?

A. I did. I didn't say I borrowed the money from there, though.

Q. No, but you got quotations on it?

A. Absolutely.

Q. Did you ever borrow any money from either of those markets?

A. Yes.

Q. So that sometimes they do get it?

A. Yes.

Q. And the ability of the banks here to loan money to you is affected by what the banks of Chicago and New York are willing to loan money to you at?

A. No. You don't make your question broad enough. The ability of the banks to loan money here is based on the offers we get from New York and Chicago and Minneapolis and the note brokers in Chicago and New York. Now sometimes the note brokers here are lower than the ones in New York and Chicago. It is just a question of how the country

banks are feeling and how their clients are able to buy and what they want.

Q. I think that is clear enough. How do you make your estimate of forty million dollars over the state of loans negotiated by brokers?

A. An estimate of about our own borrowings and what I know about other concerns, what I told you, it is purely an estimate, but I think I am within the figure.

Q. You mean that it is not a mere guess, that you know other concerns, you have discussed these matters with other men in business and you know something of what they are doing?

A. Yes.

Q. And you feel that that estimate is accurate?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. O'Brien:

Q. Mr. Gordon, is it the habit of large commercial institutions to occasionally borrow money from their own members or employees?

A. That we borrow money from our employees?

Q. I asked you whether that was a habit with commercial institutions like your own?

A. No.

Q. To borrow money from the individual members?

A. You mean that we borrow money from our employees, —is that your question?

Q. Either your officers or your employees or directors, to leave money with you on deposit.

A. Sometimes they have a small deposit with us, but we do not want any of those loans.

Q. What does it amount to in the case of your corporation, money of that sort?

A. You mean money that is on deposit with us by officers?

Q. By individual officers or members.

A. It varies.

Q. Well, about how much?

A. Well, around one hundred or one hundred and fifty thousand dollars.

Q. That is the average amount that is there?

A. Yes.

Q. You pay interest on that?

A. Sure—don't get it for nothing.

RE-CROSS EXAMINATION

By Mr. Ryan:

Q. Do I understand that your employes deposit in the aggregate of \$150,000 with your company?

A. No, that is not what—the officers and employes. Sometimes I have got a sum of money on deposit and then I will make an investment and draw it out. I let it stay on deposit with Gordon & Ferguson because I can get a better rate of interest than I can by depositing in the bank, that is all. I might have fifty or sixty thousand dollars there for two months and then buy some bonds and have nothing.

Q. What is the portion of that fund deposited by the ordinary employes of the company?

A. Well, that varies. I can give you an illustration. We give our traveling men commission on their sales, and in certain months when we are doing a large business, those commissions mount up to quite a volume. Those men will let those commissions run until the first of the year and then take them, and they vary. A good part of that would be the commissions of the traveling men. They know they are allowed to draw five per cent, or whatever the going rate is.

the bank rate, we give them, and it makes one settlement instead of making a settlement every thirty days; it makes it easier for us and easier for them.

C. O. KALMAN,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Kalman, you are a resident of St. Paul?

A. Yes.

Q. And have lived here how long?

A. Forty-two years.

Q. What is your business?

A. Investment banker.

Q. What is the name of your firm?

A. Kalman, Gates, White & Co.

Q. Is that a corporation or a copartnership?

A. Copartnership.

Q. And the business of that company is principally dealing in bonds, is it not?

A. Yes, bonds and investment securities, stocks.

Q. Do you deal in mortgages?

A. No, not direct mortgages. We deal in mortgages where there is a trust deed and bond issue against it.

Q. You deal in United States bonds?

A. Yes.

Q. Municipal bonds?

A. Yes.

Q. Corporation bonds?

A. Yes.

Q. Dealing in them. I understand you buy bonds and resell them.

A. Yes, sir.

Q. How long have you been engaged in that business in St. Paul?

A. About twelve or thirteen years.

Q. Has it been necessary for you to inform yourself as to the general market for securities of that sort?

A. Yes.

Q. In the public market?

A. Yes.

Q. And the amount of those securities that are issued in Minnesota?

A. You mean money borrowed in Minnesota?

Q. Has it been necessary for you to inform yourself as to municipal bonds issued in Minnesota?

A. Oh, yes.

Q. And certificates of indebtedness?

A. Yes, sir.

Q. And of corporation bonds?

A. Yes.

Q. And it has also been necessary for you to familiarize yourself with the market for the purchase of those bonds outside of the dealers. From all of the studying that you have made of that subject during the years that you have been engaged in business, are you able to give an estimate as to the aggregate bond sales to individuals in Minnesota each year? I don't mean by your copartnership, I mean sales in Minnesota.

A. I never have seen any compilation. The Federal Reserve Board made a compilation of the sales of mortgages and bonds in the ninth district. Of course that also included interstate sales where one dealer sells another, but that ran up into five or six hundred millions a year. I could give you the minimum figure. I would say that the amount of securities sold to Minnesota investors in a year is considerably in excess of fifty million dollars.

The Court: That is for bonds and mortgages?

Witness: Bonds and mortgages, yes.

Q. Are you including mortgages in that?

A. Yes.

Q. I only asked you about bonds.

A. Well, I would say the bonds alone would be in excess of fifty million dollars.

Q. Outside of this tabulation of the Federal Board, you know nothing about mortgages especially, do you?

A. No.

Q. That is not part of your business?

A. No.

Q. So that you think bond sales in Minnesota to investors exceed fifty million dollars?

A. Considerably, yes.

Q. Now, What proportion of those sales are to individual investors, in your judgment, individual citizens of Minnesota?

A. 75 per cent.

No cross-examination.

A. W. LINDEKE,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Lindeke, you reside in St. Paul?

A. I do.

Q. And of what company are you a member?

A. Lindeke-Warner & Sons.

Q. Is that a corporation?

A. Corporation.

Q. Engaged in the wholesale dry goods business of the city of St. Paul?

A. Yes.

Q. And also manufacturing?

A. Yes.

Q. How long have you been connected with that corporation?

A. Since 1894.

Q. Did you say you were president of the company?

A. President and treasurer.

Q. In the course of your business is it necessary for you to obtain lines of credit from the different banks, in different banks in the city of St. Paul?

A. Yes, sir.

Q. And elsewhere?

A. And elsewhere.

Q. Where have you lines of credit?

A. Direct lines with our own banks?

Q. Yes.

A. St. Paul and New York.

Q. State whether or not, in addition to that, it has been the custom of your corporation, for many years past, to borrow money through selling promissory notes that come to the brokers.

A. It has.

Q. Would you have any objection to telling how much money you borrowed of brokers in the year 1921?

A. Well, I don't care to state, unless it is desirable. Several million dollars, I would say.

Q. Are you sufficiently familiar with the way in which the mercantile and manufacturing business is carried on in the state of Minnesota, to form an estimate as to the amount of money that is loaned those various concerns upon their unsecured promissory notes through note brokers?

A. It would be a guess.

Q. Well, is it a guess or your judgment upon which you think is good enough so that you could really take some action upon it, giving the minimum?

A. Well, I would say in excess of one hundred million dollars.

Q. Now, that money from the brokers flows into the various banks, does it not?

A. Yes.

Q. And in some instances to individuals?

A. Yes.

Q. Or do you know about that?

A. Well, a very small per cent to individuals.

Q. Finally the borrower pays to the person to whom the note has gone, through the broker, does he not?

A. Yes.

Q. So that you are familiar with the force of that paper. Do you know whether or not it is the habit of large business institutions to receive deposits from their officers or employes or members of the firm?

A. It is quite customary.

Q. Have you any idea to what extent that is carried on?

A. With Lindeke-Warner & Sons?

Q. Well, I don't like to ask you about the details of your own business.

A. I should say to a very small extent.

Q. But there is some money of that sort that is loaned by individuals to those institutions?

A. Yes, there is.

Q. The extent of it you don't know?

No cross-examination.

BENJAMIN SOMMERS,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Sommers, are you an officer of the corporation of G. Sommers & Co.?

A. I am.

Q. What office?

A. President.

Q. And are you familiar with the transactions of that company?

A. I am.

Q. That company is a wholesale mercantile company in Minnesota?

A. Yes, sir.

Q. Also doing a large mail order business?

A. Yes, sir.

Q. In the course of business of that company is it necessary that it borrow money?

A. Yes, sir.

Q. And from what sources does that company borrow money?

A. From our banks and through note brokers.

Q. Do you also have deposits with you made by the officers or employees or members of the company?

A. We have what we call a savings account. That was gotten up a good many years ago for the purpose of fostering savings amongst the employees. They deposit with us, yes, and the officers also.

Q. Are you familiar with the course of the other mercantile establishments in Minnesota with reference to borrowing money?

A. Fairly so, yes, sir.

Q. And with the manufacturing establishments of the state?

A. Yes, sir.

Q. From all of your information and knowledge of the course of those companies, firms and corporations, are you able to form an estimate as to the amount of money that is borrowed by them in the aggregate in any one year through note brokers?

A. I have no information as to the exact amount, but I should imagine it would be very large.

Q. What do you mean by very large?

A. You mean in the state of Minnesota?

Q. I mean how much money is borrowed by mercantile, manufacturing and business establishments in the state of Minnesota through note brokers.

A. Well, I should say, making a guess, it would be in excess of \$100,000,000.

Q. Each year?

A. Yes. Of course in active years it is more than when business is not good.

Q. It is the practice of business concerns like your own to have established lines of credit with one or more banks in the state of Minnesota?

A. Yes, sir.

Q. Do you know what the habit is with reference to resorting to that line of credit or the note brokers first?

A. I think we get it from the note brokers first.

Q. Is it not true that it is the object of practically every mercantile institution to maintain a pretty large margin in its borrowing from the banks and its line of credit?

A. Yes. Could I explain that a little?

Q. Yes.

A. Well, when you are establishing a line of credit with a note broker, the first question he asks you is, "How large are your lines of credit with your banks?" The note broker wants to be sure that you have a sufficient line open with your banks to take care of his paper if he can't renew it in times of stress, so he asks you, "How large are your lines of credit with your banks which are open?" And he wants you to keep open so that you can take care of the business that you do with him in case the banks won't buy the paper.

Q. When you speak of open, you mean the difference between the total line of credit in a particular bank and the amount that you borrow against that?

A. Yes.

Q. Without going into any details of your business, could you give us a minimum of the average borrowing by

the corportion of G. Sommers & Co. from note brokers in any one year?

A. Well, there are times when we try to have all our payments made in the course of the year. You don't mean that, you mean the average during the year?

Q. Yes, the minimum.

A. Oh, I should think \$600,000 would be the minimum.

Q. That would be the minimum at any one time?

A. Yes, except at the end of the year when we try to pay it up.

Q. What would be the minimum borrowed during the year?

A. I think that same answer.

Q. If at any one time your minimum was \$600,000—you are constantly paying it back, are you not?

A. Yes.

Q. What would be the total of those borrowings?

A. That depends upon the activity of the year. The total of the borrowing might be several times that much.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Where are the brokers with whom you do business located?

A. We deal with two firms,—one firm in New York and one firm in Minneapolis and St. Paul.

Q. And when you apply to a note broker for a loan, you apply usually simultaneously to your New York note broker and your local note broker, do you not?

A. Well, we see where we can get the best rate, either there or at our banks.

Q. Now, when you say that the aggregate loan through note brokers in Minnesota was 100 million dollars, can you

give us an estimate as to about how much of that was loaned through Minnesota brokers?

A. I can't tell you in Minnesota. I know that there is a firm of brokers in Minnesota. We do a business some years of 100 million dollars, but I don't know whether they sell their paper all in Minnesota.

Q. When you negotiate a loan through your brokers, do you pay them a commission?

A. We do.

Q. The compensation of the broker is usually a commission?

A. A brokerage fee, yes; commission, yes.

Q. Then, what this broker really undertakes to do is to place your paper, and does it for a brokerage fee?

A. Yes, sir.

By Mr. O'Brien:

Q. Do they pay the proceeds of the note in the first instance or wait until they sell it?

A. They pay in advance.

Q. They pay it and place it where they can?

A. They sell it for anything that they can get for it. Sometimes they sell it for less money than we paid them and they make an additional profit.

Q. They buy your paper and sell it for what they can?

A. Yes. If we make a rate for them, agree to pay $5\frac{1}{4}$, and if they can dispose of that note for 5 per cent, they will do it, but ordinarily they dispose of it at the rate that we have agreed upon.

Q. I am asking whether they act as your agent in placing the paper and pay you the proceeds of the note after they have sold it, or whether they—

A. We sell it to them outright.

Mr. Ryan: It is, is it not, ordinarily and usually true, however, that they place that paper at the rate of interest

which they exact from you and that their compensation is the brokerage fee?

Witness: I think that is the ordinary case, but I have known of cases when they have made money on the notes themselves.

R. B. SHEPARD,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Shepard, you are the president of the firm of Finck, Van Slyck & McConville Company, of this city?

A. I am the treasurer.

Q. That is a wholesale dry goods firm?

A. Yes, sir.

Q. A corporation?

A. Yes, sir.

Q. And how long have you been connected with that concern?

A. About thirteen or fourteen years.

Q. Do you know the amount of its capital stock?

A. Yes, sir.

Q. How much is it?

A. The capital surplus, in round numbers, about four million.

Q. Is it necessary for the corporation of which you are treasurer to borrow money during the year for its mercantile business?

A. Yes, sir.

Q. From what sources do you borrow money?

A. We borrow through our banks, brokers and occasionally through what we call our deposit and house accounts where officers and employes will leave their money on deposit.

Q. And what does that amount to?

A. Well, that would vary from month to month, but I should say on the average that it would run somewhere between one hundred and one hundred and fifty thousand dollars.

Q. Can you give us a statement of the amount of money borrowed by your concern from brokers during the year 1921?

A. Oh, I couldn't answer; I couldn't give you that accurately. I should say it was over two million dollars, through brokers.

Q. And how much borrowed through banks?

A. Well, of course, we don't always use our full line of banks. We will borrow from them as we find we can get a better rate than we can from the broker, but I should say that—it is safe to say that probably we borrow anywhere from six hundred thousand to a million during the course of a year, but not all at one time.

Q. Would those figures apply both to 1921 and 1922?

A. Yes, sir.

Q. From your knowledge of the mercantile and manufacturing business of the state, and the amount of borrowed capital used in those industries, could you give an estimate of how much money is borrowed by Minnesota institutions in this state from brokers, in a year?

A. Well, I don't really know. I should estimate certainly over 100 million dollars.

Q. Have you had the experience of having banks in which you have a line of credit solicit borrowing by you?

A. Yes, sir.

Q. In which you have refused because you placed it with note brokers?

A. Yes, that has happened. We always try to accommodate them, but we can't always do it.

Q. Accommodate them by borrowing their money?

A. Yes.

CROSS-EXAMINATION.

By Mr. Ryan:

Q. Mr. Shepard, you have some familiarity with the banking business?

A. Well, only in my connection with our bank relations through the business.

Q. Are you connected with the First National Bank?

A. No, sir.

Q. You are not an officer?

A. No.

Q. Are you an officer of any of the banks or have you any position with them?

A. I am a director of one of the banks, but not an officer.

Q. A director of what bank?

A. The Merchants National Bank.

Q. And so in that way you endeavor to familiarize yourself to some extent with the banking conditions and banking practices and the theory of banking; isn't that true?

A. Well, I find that it takes most of my time tending to my own business.

Q. I ask you that for this reason, I want to know if you can tell how and why it is that a note broker can loan money to your concern at a lower rate of interest than the bank in which you are interested can loan money to your concern.

A. Well, I presume that is probably explained through certain conditions in the localities where that bank is operating. There may be a bigger demand in some particular section of the country than in some other where money might be a little easier.

Q. I gather, to put it concretely, that the reason for it is that this broker is able to place your loan in some other bank or banks in some other locality which banks are willing to loan money at a lesser rate of interest than the local bank.

A. Well, I presume his practice is to sell the paper as he buys it through us through his own agents in the localities where he can sell it and he sells to the country bank and to individuals, I imagine, and to other institutions.

Q. Well, country banks who are taking paper, then, are willing to loan at a lesser rate of interest than the local bank?

A. Well, that might be in some localities in the east. There might be some country banks there where they have idle funds. Maybe they want to keep it earning money. They might be able to place it, take the paper at a less rate than some bank out here where there might be a little stringency.

Q. Well, when you speak of the country banker, you don't mean the country banker in Minnesota?

A. Oh, no, all over the country.

Q. The money that goes into the hands of these note brokers goes to banks all over the country, does it not?

A. I imagine so. We sell to brokers in New York and there may be a place in San Francisco.

Q. Does it not follow as a true statement of that, that the broker merely reflects the competition of the banks of the country against the local banks?

A. Well, I wouldn't hardly say that. Just repeat that question, please.

Question repeated to witness.

A. Well, of course, we have the banks here—while we consider these local banks, we have other bank accounts in the east. It would apply just the same. We take the banks and the brokers as a whole when we go to borrow money. We ask them for a rate, and the institution that gives us the best rate gets the business.

Q. Yes, but it is also true, isn't it, when you talk of the rate of the broker, that the broker is principally, if not wholly, merely a source of outlet for scattered banks?

A. Well, he has his own clientele and he places the money through them.

Q. Then, getting back to my original question, doesn't it follow, and isn't it true, that the competition of the broker merely reflects the competition of banks constituting his clientele against local banks and against such banks in the East as you do business with, with this additional difference, that those banks, competing through a broker, are handicapped to the extent that they must pay him a commission?

A. Well, yes, there are bankers, and the brokers are in direct competition with one another for money.

Q. That doesn't answer it. Mainly what I am getting at is that the competition represented by the brokers is competition coming through him from the banks.

A. Well, of course, he doesn't always place it through banks.

Q. He does principally, does he not?

A. Well, I can't tell you that because I am not familiar enough with the brokerage business, but I do know that brokers in the East place a great amount. What that percentage is, I haven't the slightest idea.

Q. You do know, however, that in some degree at least the brokers' clientele consists of banks?

A. Oh, yes, that is quite true.

Q. Isn't it also true, a matter of opinion or belief or judgment that principally his clientele is banks?

A. Well, without really knowing I should almost think that he probably would place the majority of his paper through banks. I don't know that.

C. E. McLAREN,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. McLaren, are you an officer of the corporation known as Farwell, Ozmun, Kirk & Co., of this city?

A. Yes, sir.

Q. Is that a Minnesota corporation?

A. Yes, sir.

Q. Engaged in what business?

A. Wholesale hardware.

Q. And what is the capital stock of the company?

A. Two and a half million.

Q. In the course of the business of that company is it necessary that it borrow money?

A. It is.

Q. And from what sources does it obtain its borrowed money?

A. Through our bank connections and the brokers.

Q. Your bank connections where?

A. St. Paul and Chicago and New York.

Q. Do you have connections with National Banks of this city?

A. Yes, sir.

Q. Could you give us an estimate of the amount of money which that corporation borrows from brokers in the course of a year?

A. Well, it varies from year to year, but at the present time I should say that a million dollars of our borrowings were placed through brokers.

Q. And how was that in 1921 and 1922?

A. Well, it would run, I should say, much the same.

Q. And how does that amount compare with the amount which you obtained from banks?

A. Well, it is somewhat in excess of the bank line.

Q. You don't do all your bank borrowing in St. Paul?

A. No, sir.

Q. How did that borrowing from brokers compare with the borrowing from St. Paul banks?

A. Well, it would be greatly in excess of our borrowings from banks.

Q. Are you familiar with the general course of business as carried on by the various mercantile and manufacturing establishments in Minnesota? ?

A. Fairly so.

Q. From your knowledge of the situation, can you give an estimate of the amount of money that is borrowed by Minnesota institutions of that character from note brokers?

A. I have never made any calculations along those lines. Any statement I might make would be a pure guess, but the sum must run up into very large figures. I think 100 million, which has been stated by other witnesses, is probably—I would think under the actual figure.

Q. Any considerable portion of that purchased by brokers here?

A. No; I would say a very great part of that was purchased by brokers in the East.

Q. And how much would you say was purchased by brokers in Minnesota? Have you any means of knowing?

A. I have no means of knowing, but I do know this, that our borrowings through our brokers in Minnesota this year are greatly in excess of former years. The rate seems to favor this market.

CROSS-EXAMINATION

By Mr. Ryan:

Q. When you were in the market for money, you endeavored to borrow it through your banks simultaneously at St. Paul and Chicago and New York, and at the same time negotiate with the brokers?

A. As a rule, we aim to keep our bank lines open. We have agreed upon bank lines, but we usually keep a large

open margin there to take care of emergencies and to take care of this commercial paper, as they call it, as it matures.

Q. You regard, then, this borrowing through note brokers as something of a different nature than your borrowings from your banks, do you not?

A. Well, it is different, usually, in that the rate is lower.

Q. Is it different in any other respect?

A. Not so far as I can determine.

Q. Assume this situation, that your broker offered you a loan at one figure and your banks were able to take care of the amount you wanted to borrow, offered you the same rate, would you favor the broker?

A. We would if we felt the need of keeping our bank line open, if the rates were even.

Q. Well, there is something more than the rate involved?

A. Well, no, a lower rate from our bank would result in our borrowing from the bank.

Q. Well, an equal rate does not, however?

A. Not always.

Q. To that extent, then, at least I draw the conclusion that because, other things being equal, you borrow from your broker, there must be something other than the rate involved in the transaction.

A. No; there is the question of our needs involved, constantly.

Q. Assume that you need a million dollars, you go to your banks and they will offer it to you at one rate; you go to your note broker and they offer it to you at the same rate, you say that you take it through your note broker?

A. No, I wouldn't say that. We borrow from our banks possibly well up to 50 per cent of our line, sometimes not as much as that, but it is largely a question of rates.

Q. Did you ever borrow, taking the aggregate borrowing through your note brokers and through your banks, more than the aggregate of your bank lines?

A. The combined borrowings would be in excess of our bank lines. I think not, not anything more than our bank line.

Q. In your borrowings through brokers, have you borrowed through local or eastern brokers prior to this year, principally?

A. Well, it depends on the rates. This year the local brokers are able to serve us more satisfactorily than the eastern brokers.

Q. But there is, at all times, is there not, competition between the local broker and the note broker and the eastern note broker?

A. Yes.

Q. And there is competition between the Chicago bank and the New York bank and the St. Paul bank?

A. Yes, sir.

F. P. FELLOWS,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Fellows, you are an officer of the Capital Loan & Trust Company, of this city?

A. Capital Trust & Savings Bank.

Q. You hold what position?

A. Vice-president.

Q. And have been connected with that corporation for a long while?

A. About twelve years.

Q. Is that corporation organized under the laws of Minnesota?

A. It is.

Q. It receives deposits?

A. Yes.

Q. It does a banking business?

A. A savings bank and trust company business.

Q. And is affiliated with the Capital National Bank of this city?

A. Well, it is not directly affiliated, no. It is closely connected with the organization.

Q. Are the stockholders identical?

A. No.

Q. Can you let us know the amount of mortgages outstanding on the 1st of May, 1921, which had been on Minnesota real estate negotiated through your bank and sold to individual investors?

A. I can't give you the figures of that date.

Q. What date can you give us that figure for?

A. Well, I can give you information relative to the loans which have been sold in the last four years.

Q. The total of loans sold in the last four years on Minnesota real estate?

A. The total of loans sold in the last four years on Minnesota real estate, both farm and city.

Q. Have you got it for each year?

A. Each year and in the aggregate.

Q. Will you give us that?

A. In 1919 the total farm sales in Minnesota were \$2,421,000; in 1920, \$1,896,000; in 1921, \$1,743,000, and in 1922, \$1,656,000, making a total of \$7,718,000.

Q. And what were the maturities of those mortgages?

A. They ran practically all for five years.

Q. Now, what about city mortgages?

A. In city mortgages, we made, in 1919, \$2,173,000.

Q. I would rather have the loans that we disposed of.

A. Such loans sold \$1,115,000 in 1919; in 1920, \$1,051,000; in 1921, \$1,128,000, and in 1922, \$1,986,000, or a total of \$5,282,000.

Q. And what were the average maturities of those mortgages?

A. Well, they will average pretty close to five years.

Q. And to what class of investors were those mortgages principally sold?

A. Very largely to individual investors.

Q. Of what residence?

A. Well, the greater proportion; I would say that fully 95 per cent would be sold to Minnesota residents, either individuals or corporations.

Q. Have you a statement of your bond sales?

A. No.

Q. During that period?

A. I haven't for our sales of bonds. Our sales of bonds last year through our banking department were about three million, practically all to Minnesota residents.

Q. During what period was that?

A. 1922.

Q. What about 1921?

A. Well, I haven't the figures on that.

Q. Has your company trust estates?

A. We have.

Q. And estates of deceased persons and persons under guardianship?

A. Yes.

Q. Are you able to state the total amount of those estates?

A. No, I haven't got the total. I can't give you that total.

Q. The amounts are substantial in all those estates, are they not?

A. In some, yes.

Q. And principally invested in personal property?

A. They are principally invested in farm and city loans and in various types of bonds.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Now, Mr. Fellows, how do you procure your farm loans?

A. They are procured through banking connections out in the country.

Q. National Banks as well as State Banks?

A. Yes.

Q. One desiring a loan approaches the local bank, that bank hasn't funds which it desires to loan upon the credit offered, transmits the application to your Trust Company?

A. Yes.

Q. And that is the way all your outside loans are made?

A. Yes. As a matter of fact, the country bank handles the larger part of its farm loan business through such a connection. Country banks carry very few farm loans.

Q. And the city loans are, you say, all over a year?

A. The city loans average five years. The average would be pretty close to five years.

Q. Would you say that there was any appreciable portion of the loans made within the city on mortgages for a period of a year or less?

A. Very, very few.

Q. Do you sell any of your bonds or mortgages through the banks in the smaller communities?

A. Occasionally, but not very often in Minnesota; in southern Minnesota you would some, but when you get into Dakota and Montana, none at all.

Q. These transactions, your mortgage loans and your bond transactions, are transactions of the Trust Company and not of the Savings Bank, are they not?

A. Well, we have a savings department of the Trust Company. The bond business is done by the Trust Company and not by the National Bank.

in a community necessarily competes with all other money that is also loaned at interest?

A. It does, in a broad way, yes.

M. J. CASHEL,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Cashel, are you in charge of the mortgage department of the Northwestern Trust Company of this city?

A. I am not in charge of it, no, sir. I am one of the—kind of an assistant.

Q. Well, you are connected with that company?

A. Yes.

Q. Can you give us the amount of mortgages upon real estate in Minnesota held by that company on May 1, 1921?

A. About \$2,900,000.

Q. And how about 1922?

A. About \$3,100,000.

Q. Do you know the aggregate amount of mortgages on Minnesota real estate sold by the Northwestern Trust Company during the year 1921?

A. About \$900,000.

Q. In 1922?

A. About \$325,000.

Q. To whom were those mortgages sold, what classes?

A. Well, they were sold to individuals in Minnesota.

No cross-examination.

A. T. STOLPESTAD,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. What position do you occupy with the Northwestern Trust Company of this city?

A. Assistant secretary.

Q. What is the capital stock of the company?

A. A million dollars.

Q. And what was its surplus on the 1st of May, 1921?

A. \$100,000.

Q. And what was its undivided profit surplus?

A. \$153,217.62.

Q. And what were its real estate holdings on that date?

A. \$96,446.10.

Q. What were the gross earnings of that company during the year 1921, exclusive of interest on United States and municipal bonds and the interest paid by the company upon borrowed money?

A. \$316,644.43.

Q. What amount did the company receive as interest upon United States and municipal bonds?

A. During 1921?

Q. 1921.

A. \$20,167.47.

Q. And how much did it pay upon borrowed money?

A. \$12,335.84.

Q. This company pays a gross earnings tax, does it not?

A. Yes, sir.

Q. You do no banking business?

A. No banking business whatever.

Q. And your income tax for that year was based upon the figures that you have given, \$316,644.43?

A. Yes, sir.

Q. And upon that you paid five per cent, amounting to how much?

A. \$15,832.22.

Q. Now, the capital stock, surplus and undivided profits, less your holdings in real estate, amounted to \$1,156,771.52. Have you got that figure?

A. I could compute that very quickly, \$1,156,771.52.

The Court: That represented the capital and the—

Witness: The capital, surplus and undivided profits, less the real estate.

Q. Will you give us 40 per cent of that amount?

A. \$462,708.61.

Q. And the tax of six per cent on that forty per cent would amount to how much?

A. \$27,762.48.

Q. And how much is that amount in excess of all over what you actually paid as taxes?

A. Approximately \$12,000; about \$11,900.

No cross-examination.

HENRY C. SOUCHERAY,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Soucheray, you reside in the city of St. Paul?

A. I do.

Q. And what is your business?

A. Abstractor of titles.

Q. You are a member of what?

A. The St. Paul Abstract Co.

Q. Is that a corporation?

A. A corporation.

Q. And what office do you hold with the corporation?

A. That of treasurer.

Q. And do you actively work at the matter of preparing abstracts of title and examining the records in the counties?

A. I do.

Q. Register of Deeds office?

A. Yes.

Q. How long have you been engaged in that occupation?

A. About thirty-one years.

Q. Have you made an examination for the purpose of ascertaining the amount of mortgages recorded during the year 1921 in Ramsey County upon real estate in Ramsey County owned by residents of Ramsey County, Minnesota, which at this date remain unsatisfied?

A. I have made such an examination.

Q. Can you state the amount of such mortgages?

A. They amount to \$9,889,047.

Q. That includes all mortgages?

A. The mortgages recorded, as I take it, during the year 1921, owned by residents of Ramsey County, is \$6,351,105.

Q. And how much was the aggregate of mortgages owned by corporations on real estate in Ramsey County?

The Court: At first, I take it, it was individuals.

Witness: Individuals, yes.

Q. I want to know the mortgages on Ramsey County real estate for the year 1921 still unsatisfied, owned by Minnesota corporations, excepting savings banks and trust companies.

A. There were \$3,537,942.

Q. Will you state the aggregate amount of mortgages recorded from January 1st to April 30th, 1922, unsatisfied on that date and owned by residents of Ramsey County on April 30, 1922?

A. \$2,204,351.

Q. Will you please state the aggregate amount of mortgages recorded from January 1st to April 30, 1922, still unsatisfied on that date, owned by Minnesota corporations, except savings banks and trust companies?

A. \$996,113.

Q. Do you know the total of those four items that you have given?

A. Yes. The total is \$13,089,491.

Q. Have you made an examination for the purpose of determining what portion of those mortgages were purchase money mortgages?

A. I have made such an examination.

Q. And what portion of that total were purchase money mortgages, in your judgment?

A. Well, the actual figures are \$1,019,569.

Q. When, you say actual figures, what do you mean?

A. Well, that is the total of all mortgages which state on their face that they are given to secure the unpaid portion of the purchase money.

Q. Do those amounts that you have given include any sales contracts?

A. They do not.

Q. Is your familiarity with the records of the office of the register of deeds taken in connection with the abstract records which you have accumulated in your office, and your acquaintanceship with the individuals of St. Paul such that you feel that your statements here are correct?

A. I feel that the statement is correct.

CROSS-EXAMINATION.

By Mr. Ryan:

Q. These mortgages are almost wholly mortgages on St. Paul city real estate, are they not?

A. Yes, although in this statement is included the whole of Ramsey County.

Q. Yes, but the mortgages upon lands outside of the city limits and within Ramsey county are relatively insignificant, are they not?

A. This statement, a small part of it.

Q. Can you roughly estimate the percentage?

A. This is an opinion. It would be about twenty per cent.

Q. Twenty per cent of those mortgages outside the city?

A. Outside the city. It includes White Bear, North St. Paul and those other outskirts.

Q. That would be notwithstanding the fact that, you say, about 97 per cent of the population was within the city?

A. Well, of course, the values of property outside are higher and naturally the mortgages are correspondingly higher, too, when they have it.

Q. You don't mean that the values of land outside of the city limits are higher than the values within the city?

A. What I meant to say is that the population would not be a fair basis to determine how much the mortgages were.

Q. Wouldn't it also be true that about 97 per cent of the real estate values of the county lie within the city limits?

A. That I didn't know. Isn't the basis of valuation outside smaller?

Q. Well, your expression of opinion that 20 per cent of the mortgages on land outside of the city is quite an estimate, isn't it?

A. Absolutely.

Q. You wouldn't say that it might not be limited to one per cent, would you?

A. There are some very heavy mortgages that raised the amount. There are a great many large farms that are heavily mortgaged. I can remember of some great mortgages up to about two and three hundred thousand dollars at one time.

Q. Those are unusual, though?

A. They are unusual, yes.

Q. Did you observe any of those mortgages that were for a shorter time than one year?

A. Well, they ran all the way from one, two, three and five years.

Q. A one-year mortgage would be a very, very rare thing, would it not?

A. Not so rare, no.

Q. These mortgages that you speak of are mortgages only running to individuals, or do you include banks?

A. We are talking about mortgages running to individuals resident of Ramsey county and to corporations, excepting only savings banks and trust companies.

Q. When you say that you occasionally see some mortgages whose maturity is not greater than a year, have you observed that those mortgages usually ran to banks?

A. They are more likely to run to individuals.

Q. Did you observe any that ran to banks?

A. Oh, yes.

Q. Can you estimate about what amount of mortgages in Ramsey county, say during the year 1921, ran to banks?

A. I could not.

Q. Haven't you any idea at all?

A. Not at all. That would be guesswork. I couldn't tell.

JAMES D. ARMSTRONG,

recalled on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Armstrong, I understand you desire to correct your testimony in some respect.

A. I think I stated this morning, Mr. O'Brien, that interest rates were higher in 1922 than they were in 1921. That is not the fact. The interest rates were higher in 1921 than they were in 1922, and to that extent I would like to correct my testimony.

HENRY B. BACON,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Bacon, where do you reside?

A. St. Paul.

Q. And what is your business?

A. Chief clerk of the tax commission of Minnesota.

Q. How long have you occupied that position?

A. Fourteen years.

Q. What was the amount of money and credits returned for taxation to the State of Minnesota for the year 1921?

A. The amount returned was \$425,745,839.

Q. And how much of that was returned in the County of Ramsey, Minnesota?

A. In the County of Ramsey, for the year 1921, was \$83,965,268.

Q. That was value as of the 1st of May, 1921?

A. Yes, sir.

Q. How much did those classes of property amount to as returned for the year 1922?

A. \$83,796,840.

Q. That is Ramsey County?

A. That is Ramsey county.

Q. And how much for the entire State of Minnesota?

A. \$400,688,948.

Q. The taxpayer is required to list that class of property upon a blank furnished by the tax authorities, is he not?

A. Yes, sir.

Q. (Showing witness Deft's. Ex. G). Will you state whether that form is the form in which the taxpayer is required to make the return?

A. That is the form specified by the tax commission.

Q. It contains fifteen items?

A. It does.

Q. Has the tax commission of Minnesota subdivided the total moneys and credits between the fifteen items shown upon the return in the form of Ex. G?

A. They tried to do it for 1918 and got practically complete returns except for Pope county, some few districts.

Q. Do you consider that the segregation of items made by your department in 1918 would be practically correct as to percentages in the years 1921 and 1922?

A. I think it would be, practically.

Q. Would you please produce the segregation which you made for the year 1918?

A. I have it here.

Q. (Deft's. Ex. H shown witness). State whether or not the total shown upon Ex. H was the aggregate amount of money and credits returned for the year 1918.

A. Now, for the year 1918, the aggregate amount of money and credits for the entire state was \$330,300,219. As I stated before, some districts failed to make a report to the county auditor, and Pope county made no return. Therefore, the amount of the segregation is \$325,680,420, a difference of not quite five million dollars.

Ex. H offered in evidence.

Q. Did you make a similar segregation of the items for Ramsey county?

A. I did for Ramsey county for 1918.

Q. Will you produce that? (Witness produces paper.)

Q. (Ex. I shown witness). Is that the segregation prepared for 1918?

A. That is correct.

Q. Of Ramsey county?

A. Of Ramsey county, yes.

Q. Would you consider that the percentages shown for that year would be approximately correct for subsequent years?

A. It would be approximately. Some items vary a little bit.

Deft's. Ex. I introduced in evidence.

Q. This class of property referred to as money and credits is the property which, under the laws of Minnesota, are taxed at three mills?

A. Yes, sir.

Q. Now, I call your attention to pages 380 and 381 of the report of the Tax Commission for 1921 and 1922, and ask you, by referring to that report, to state the amount of registry tax paid in Minnesota upon mortgages upon real estate in Minnesota during the eleven months ending June 30, 1921.

A. \$461,406.58.

Q. The registry tax upon mortgages for five years or less is one and one-half mills, is it not?

A. That is correct, yes.

Q. And for those months which run for a longer period of time, two and one-half mills?

A. 25 cents on \$100, yes.

Q. And after the registry tax is paid they are tax exempt, is that correct?

A. That is right.

Q. Now, will you please take the amount paid in registry tax for the eleven months ending June 30, 1921, which you state was \$461,406.58, and give me the aggregate of those mortgages, assuming that the registry tax was one and one-half mills?

A. In the neighborhood of \$307,600,000.

Q. And at the rate of two and one-half mills, what would that amount to?

A. It would amount to about \$184,560,000.

Q. What was the amount collected in registry tax for the fiscal year ending June 30, 1922?

A. \$529,923.47.

Q. Those amounts that you have given as being collected were the registry taxes collected upon mortgages recorded in Minnesota during those years?

A. Yes, that is correct.

Q. Will you please turn to pages 96 and 97 of the report of the Tax Commission for those years and inform us what percentage of the entire tax collected in the State of Minnesota was collected upon money and credits?

A. That is another proposition. I can tell you in a few minutes. The total tax for 1921, exclusive of special assessments, was \$108,087,336.31.

Q. When you speak of the entire taxes, you mean gross earnings taxes from all iron mining taxes, every form of taxation?

A. That simply meant the ad valorem tax, not gross earnings or any other form of taxes. The entire tax which was levied in this state for 1921.

Q. Is that not given on pages 96 and 97?

A. The entire tax of all forms for the year 1921 was \$124,315,917.95. Now, the mortgage registry tax was less than one per cent of the total.

Q. I said the money and credits.

A. The money and credits tax was less than one per cent of the total.

Q. Approximately one per cent, was it?

A. Yes, approximately one per cent of the total. It would be something over \$1,200,000.

A. It would amount to about \$184,560,000.

Q. Will you please give us, by turning to pages 96 and 97, what proportion of the assessed value of money and credits was of total property assessed in the state?

A. About 17 per cent.

Q. And that property, amounting to 17 per cent of the total assessed property paid approximately one per cent of the tax?

A. That is correct.

Q. Now, kindly furnish me with a list of the trust companies paying gross earnings tax in Minnesota.

A. Yes. (producing paper).

Q. (Ex. J shown witness). Is that a correct list of the companies?

A. So far as shown on our record at this time, so far as shown by that list.

Q. That statement was not prepared by you, but look at it and see if it is correct.

A. I believe that to be correct.

Q. That, you think, is a correct list of the companies?

A. I believe it is.

Ex. J introduced in evidence; also tabulation of the evidence given by Mr. Stolpestad with reference to the payment of the gross earnings tax by the Northwestern Trust Company.

Court here adjourned until Wednesday morning, October 24th.

Q. I understand you desire to make a correction in your testimony, Mr. Bacon.

A. Yes; a question you asked yesterday, if I understand it, was what per cent of the total sum here noted on page 97 of the Tax Commission report, \$2,383,000 was represented by the assessment of money and credits. I gave the amount as 17 per cent, which is entirely correct as far as it goes, but on page 73 of the Tax Commission report we find a different tabulation. Money and credits assessed at 100 per cent of true and full value, and all of the taxable property of the state, the true and full value is not less than seven billions of dollars. The proportion of that which money and credits bears would be not less than—would be about six per cent rather than seventeen as to the total true and full value.

Q. Now, you would derive the percentage of 17 per cent in consideration of the tabulations on what page of your report?

A. Pages 96 and 97.

Q. Are all the items carried there at their full and true value? These items referred to here on pages 96 and 97 are the taxable values or the assessable values of the real and personal property?

A. It does not include the property included—when you asked me how much was the total of all property—tax on all property in the state, including gross earnings on royalties and other kinds of property, which, according to the estimate of the Tax Commission, given on page 73, is not less than \$850,000,000 true and full value.

Q. Well, on what basis is each item of personal property carried on pages 96 and 97? Is it at its true value or its assessable value?

A. Its assessable value.

Q. In case of money and credits, the true value, and the assessable value are identical?

A. They are identical.

Q. And so on pages 96 and 97, money and credits appear at both its true and its assessable value?

A. Yes, sir.

Q. The other items appear at their assessed value?

A. Yes.

Q. Which is forty per cent of the true value?

A. Partly forty per cent and partly $33\frac{1}{3}$ per cent, partly 25 per cent.

Q. But in all cases they appear at the assessed value?

A. That is correct.

Q. The result is that on the basis of assessment, money and credits constitutes seventeen per cent of the assessed value?

A. Yes.

Q. And pay the tax of one per cent of the total taxes. Now, you claim that you desire to point out that regardless of the fact that money and credits are carried at 100 per cent, in determining that percentage you should take all

of the other property at 100 per cent as shown on page 73; is that right?

A. That is correct.

Mr. O'Brien: Could we have an understanding that either party may refer to any portion of this report?

Mr. Ryan: I understand the report is in evidence. I agree with you on that, that either party may refer to it; the Court may take judicial notice of it.

E. A. YOUNG,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr Young, you are the County Assessor of Ramsey county?

A. I am.

Q. Did you prepare a statement segregating the items of money and credits as returned to your office for the years 1921 and 1922?

A. I did.

Q. (Ex. G shown witness). Will you please state whether that is the first segregation you made?

A. That is the correct figures.

Q. I think that document came from your office, Mr. Young.

Mr. Ryan: It is based upon this sheet here, which comes from his office.

Witness: This is a copy.

Q. That is a correct segregation of the items of the total?

A. That is all the individuals who returned personal property in excess of \$4,000. It is 91 per cent of the total personal property of money and credits returned.

Q. And you have segregated the items going to make

up money and credits, and they are correctly stated on this exhibit?

A. They are.

Q. Since preparing Ex. G, you have also separated those items between the returns of individuals and corporations?

A. Yes, that was done.

Q. I show you Exs. K and L, and ask you if that is the segregation which you made between individuals and corporations, respectively, for the years 1921 and 1922?

A. That is correct.

Q. That is right?

A. Correct.

Exs. K and L introduced in evidence, also Ex. G.

Q. What are cream checks?

A. Oh, that is checks of the creamery people that they had standing out.

Q. Very little of that in Ramsey county?

A. Very little. This schedule was made up by the State Tax Commission.

Q. The 91 per cent from which these tabulations have been made, represent how many taxpayers, how many returns?

A. About 1,900.

Q. I understand that the total number of returns which you included in making up this segregation of taxpayers are 1,900?

A. About 1,900, yes.

Q. And the balance was about how many? Can you estimate?

A. About 3,000 more, on money and credits, were very small; that is, under \$4,000.

Q. So the total would be in the neighborhood of 5,000?

A. About 6,000, total.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Mr. Young, how long have you been County Assessor?

A. Four and one-half years.

Q. And prior to that time what was your occupation?

A. Mercantile business.

Q. And how long were you in the mercantile business?

A. Fifty-five years.

Q. And in what capacity were you in the mercantile business?

A. I was the office manager of the business partnership of Finch, Young & McConville.

Q. That was one of the very large—

A. Wholesale drygoods.

Q. —jobbing houses in this city?

A. Yes.

Q. And as County Assessor you keep in close touch with the reports made by taxpayers upon which their assessment is based, do you not?

A. I do. I take all the large ones myself personally.

Q. During the making of the assessment, in a great measure you make inquiries concerning the details of their reports, examine into them and familiarize yourself with the contents of them?

A. I do.

Q. And to a very large extent you are familiar with all the assessments, particularly the personal property assessments made under your direction?

A. Yes.

Q. And as I understand the system of your office, it is this; that the principal taxpayers make a return, do they?

A. Oh, yes, the large taxpayers would hardly, with an exception, make returns. And those large taxpayers' re-

turns are made to me individually; I do not permit any of my clerks to accept them.

Q. And quite a large percentage of all the assessments made are made upon returns made by taxpayers, are they not?

A. Oh, yes.

Q. Where there are no returns, your field men go to every house and every place of business and make inquiries and make observations and they report their findings to the office?

A. We attempt at the present time to get a return from every taxpayer that our field men visit, but they do not visit all, and as far as possible we get the returns direct from those field men. When the field man's work is done, any cards that are left out, that haven't been reported, they are arbitrarily assessed or every effort is made to find out if they have moved. If they have moved away, the cards are rejected, and if they are still in the city, an attempt is made to make them come in and make their report. If they do not do it, we make an arbitrary assessment.

Q. In the course of the assessment, a card is made out showing the details of the assessment against every individual and corporation subsequently going on the tax-roll?

A. The field man takes a schedule, and that schedule is copied on to our office cards.

Q. And those cards are filed and they are being constantly gone over by you and by your deputies, so that you are familiar with the details of those assessments?

A. Oh, yes.

Q. And as a matter of experience in handling those cards, you can tell a great deal about—you can interpret the cards in a very large measure so as to know what the detail of the assessment represents in probably a more real and practical way than the listing would indicate, can you not?

A. I can.

Q. Take, for instance, the item 5, of money and credits, bonds except U. S. bonds, is it possible for you by going over the lists of persons who are assessed on that item, to determine with reasonable certainty the nature of their investments in those bonds?

A. It is. In many cases, the items of the different bonds are brought into my office and shown to me, and the question comes up as to which bonds are taxable and which are not. That is gone over by me personally with a great many people.

Q. You are pretty well acquainted throughout the city, are you not, you know the city very well and its people?

A. Quite well, yes.

Q. And you have been all your life in contact with them. Isn't it true, Mr. Young, that you can take that list of money and credits and go through it and say to us one way or the other, with reasonable certainty, what sort of investments those bonds represent, the people who have put their money into those bonds and the like, what sort of funds in the hands of those people they represent?

A. Well, that would only be possible, Mr. Ryan, with the larger taxpayers, as to the class of the bonds.

Q. As to the larger taxpayers. Well, is it true, or is it not true, can you determine from your list whether it is true or not true that the bonds found upon this money and credit list in the hands of individuals will be investments by those individuals of their surplus funds?

A. I think in most all cases they do.

Q. Can you say, from your list, whether in any instances those bonds represent bonds bought by individuals for speculative purposes?

A. I should say not. I should say they were bought for investment purposes.

Q. And that you can tell from an inspection of your tax-list, can you not?

A. Yes, I can. Practically every one of the small returns are investment security, practically every one of them.

Q. What do you know about the larger assessments upon that item, bonds in the hands of individuals? Are you able to say from your inspection of your lists whether any of those bonds are speculative holdings?

A. I should say a very, very small amount of them are speculative holdings. The large majority of them are investment securities, bought for investment purposes.

Q. And those holdings by individuals, you consider them holdings in connection with the business of the individual, or whether or not they are holdings of moneys, being the surplus over and above the business requirements of the persons holding such funds?

A. I think a large number of them are individual holdings. That item is not very large on the part of corporations and partnerships; it is more largely of individuals.

Q. You know very largely, from an inspection of your lists, what the business of the individual reporting those bonds is, do you not?

A. I would.

Q. Are you able to form an opinion as to whether or not those individuals have acquired or are holding those bonds in connection with their business or whether or not they represent investment of funds not employed in the business in which they are engaged?

A. Well, I should say that in almost all cases in that item No. 5 that those bonds were purchased for investment purposes.

Q. That is, outside of the business which the individual reporting is engaged in?

A. Yes.

Q. Now, take item 4, promissory notes, bills of exchange, due bills, cream checks and similar evidences of indebtedness, are you able to say from your familiarity with assessments, from your inspection of the lists, what kind of promissory notes are included there, describing the promissory notes as to the manner in which they come into the possession of the individual or corporation or their use by the individual or the corporation?

A. The promissory notes are very largely made up of corporations and business concerns, and in almost all cases those promissory notes are accepted by the concern for past-due indebtedness.

Q. Do you know to what extent that would be true of the individual holdings of promissory notes?

A. No, I couldn't answer that question.

Q. You don't know?

A. I don't know.

?

Q. What do you know, if anything, about bills of exchange and due bills?

A. It is a very small portion of the whole.

Q. And similar evidences of indebtedness?

A. That would be a very small proportion. The fact is that almost the entire amount for that item "promissory notes" are promissory notes.

Q. Do you know anything of that same general nature concerning item 6, "Real estate mortgages upon lands situated outside of this state?"

A. No. That is comparatively a small item as well, and that would simply mean the individual—in most cases that would be an individual holding on the outside. What item is that?

Q. Six, outside real estate mortgages.

A. That would be a small matter, and in most cases would be an individual who held one of those securities outside the state.

Q. Nothing in your records, or upon the face of the list which would enable you to state, with any reasonable certainty, as to how usually such individuals come in possession of those mortgages?

A. There is no possibility of knowing that. The return is simply made by the owner that that property is secured outside of the state and taxable here.

Q. The next item, "Chattel mortgages upon personal property in the state or elsewhere, and the amount secured thereby." Apparently mostly held by corporations. Can you throw any light on that item?

A. Yes. I know a good deal about that. Those chattel mortgages are very largely furniture mortgages, taken for furniture delivered by the furniture companies and upon which they have taken a mortgage and mortgages on automobiles. That item is very, very largely—those two items.

Q. Is that true of the chattel mortgages in item 8 listed by individuals as well as by corporations?

A. Those are almost entirely by corporations, corporations or firms.

Q. One of these segregations that you have for 1922, for instance, those in the hands of corporations, amount to \$1,027,000 and in the hands of individuals \$347,000.

A. What item is that?

Q. I probably misunderstood you. Under the head "individuals" you include individuals and firms, item 8. In the hands of corporations there were \$1,027,168; under the head "Individuals", \$347,667. That item under "Individuals" includes firms, does it?

A. Partnerships. There were very few of those items, chattel mortgages that were taken by individuals personally, although if a man is running a business in his own name, that would have appeared under the head of "Individuals" here. For instance, Joseph Levi, in the furniture business.

Q. Substantially all of those chattel mortgages are of the type you have described?

A. Practically all of them.

Q. "Book accounts," I suppose that is explanatory. Can you add anything by way of description to the nature of those book accounts as you have observed that from your experience in the office in your inspection of the returns? Can you throw any light upon that item, other than it appears to be?

A. That is almost entirely the large firms, but many of the smaller firms have book accounts as well, but it is very largely made up of the large concerns, both corporations and partnerships, and a very small amount of that is individuals. The great bulk of it is the leading jobbers and the commission men and firms. The item of "Individuals" is very small.

Q. That represents—appears to—sums owing for goods sold or services performed, and matters of that kind, charged upon books and remaining unpaid as of May 1st?

A. Almost entirely for merchandise sold and remaining unpaid on May 1st.

Q. Can you throw any additional light upon item 15, "Shares of stock in corporations the property of which is not assessed or taxed in this state?"

A. That is pretty difficult.

Q. To what extent, if any, so far as you know, does this list of money and credits that you have given, include money and credits in the hands of such concerns as investment houses?

A. Oh, very small, only a very few investment houses who make returns here. Many of them are reported in Minneapolis and make no return in St. Paul at all. In fact, I think there were only two who make any return in St. Paul, outside of perhaps office fixtures or something of that

kind. I think there is no money and credits return made by any concern but two.

Q. Can you state what the aggregate money and credits reported for taxation by those investment houses was for the year 1921?

A. Yes, I can give you those figures. One of them \$11,860 in 1921, and in 1922 \$14,790.

Mr. O'Brien: Are you referring to the tax or the amount—

Witness: The gross amount of return of the money and credits, including cash and bonds on hand, etc. The other one in 1921, \$61,640, and in 1922, 94,100. I think that those are the only two bond houses who make any return in our office except for office furniture and fixtures, etc., personal property.

RE-DIRECT EXAMINATION.

By Mr. O'Brien:

Q. This last statement of yours referred to corporations, did it not and investment companies?

A. Yes.

Q. You were not referring to individuals?

A. No.

Q. And, of course, it didn't include any of the banks or trust companies or persons who were taxed upon a different basis than upon a direct tax upon their money and credits?

A. Not at all.

Q. Now, you have been Assessor for how many years?

A. Four and a half years.

Q. The law of taxing money and credits separately, classifying that property and taxing it separately, was passed in about 1910, was it not?

A. I think it didn't go into effect until 1912 or 1914. I was not the Assessor then.

Q. It is a comparatively recent law?

A. Yes.

Q. And was enacted upon the theory that if a low tax was placed upon money and credits the holders of that class of property would be more willing to list it for taxation?

A. I presume so.

Q. It is a class of property that is very difficult for any tax authority to find, is it not?

A. Very.

Q. So that after all of these efforts which you have made and the personal attention that you have given to it, you are not at all satisfied that you have been able to assess the actual money capital in this city and county invested in that form of property, are you?

A. I am not satisfied with it, Mr. O'Brien; no, sir.

Q. You are quite convinced that there is an immense amount of that that in one way or another has escaped taxation?

A. Yes, because we must depend very largely upon the honesty of the taxpayer.

Q. And in the case of the smaller property holder, the taxpayer who owns one bond or two bonds has never been taxed and whose name has never appeared upon the tax-roll, you are absolutely at sea with regard to the amount of that, are you not?

A. We do the best we can. We sent to every taxpayer a schedule with money and credits and ask him to make return on it. A great many returns are made, which is very small,—100, 200 or 500.

Q. An individual of small means, who is not a householder, his name is very likely to be omitted from the tax-roll, is it not?

A. I am afraid it is.

Q. Of course, you know that there is a large amount of money invested in securities of this sort in this community?

A. Yes.

Q. And you know that if it doesn't appear upon the tax-roll it must be there because it is held by corporations that pay a tax upon a different basis or because the taxpayer fails to return it; is not that true?

A. That is a difficult question to answer, Mr. O'Brien, because a great many people come into my office with different securities, and read them over and ask me if they are taxable. For instance, stock in any railroad that pays a gross earnings tax in Minnesota is not taxable. Bonds of the Great Northern Railway Company, which is recorded in the State of Minnesota, are not taxable. Municipal bonds in Minnesota are not taxable. Stock held by individuals in corporations who pay a tax is not taxable.

Q. Industrial bonds?

A. Industrial bonds are not taxable provided they pay a tax.

Q. Provided they are secured by a mortgage upon real estate?

A. Yes. Any mortgage paying a registration tax in the State of Minnesota is not taxable, and it is very difficult, under those conditions, to know what the holdings of any individual or concern is unless they make a detailed report.

Q. Still you do know that there is a large amount of money invested in securities that are taxable and in stock of corporations dealing in taxable securities which is not reflected upon your tax return?

A. I am afraid there is.

Q. How many cards are there in your office which you examine in your office with reference to personal property?

A. Personal property or real estate?

Q. Personal property?

A. About 47,000.

Q. That includes the 9,000 money and credits?

A. Yes, both items are on one card.

Q. And this analysis that you have made of the holdings of money and credits applies exclusively to Ramsey county?

A. That applies exclusively to the city of St. Paul. Ramsey county is not in that.

Q. It applies exclusively to the city of St. Paul?

A. Yes.

Q. I think you said that some of the larger investment houses were in Minneapolis?

A. Yes.

Q. And, of course, there are investment houses in Winona, Rochester and Crookston and Stillwater and Duluth and all over the state, are there not?

A. Well, I do not know this. All I know is the Minneapolis.

Q. You know nothing about them. Now, as I understand you to say, your best judgment is that the larger proportion of the item No. 5 is held by individuals?

A. Yes, that is correct. That is my opinion.

Q. And you come to that conclusion from your knowledge of the individuals making the returns?

A. I do.

Q. And therefore that constitutes moneyed capital in the hands of an individual citizen of Minnesota?

A. It does.

Q. Invested in securities, in taxable securities under the laws of this state?

A. That is correct.

Q. The other proportion, whatever that is, of that item, in your judgment, is in the hands of investment companies?

A. No, it is not in the hands of investment companies, it is in the hands of concerns and corporations, and so on, who own the securities.

Q. Isn't it in the hands of the corporation conducting an investment business?

A. No.

Q. Can you give any instance of any corporation holding any of that item except an investment company?

A. I can by going over the record here, very well, if you want me to do that. I can pick them out very easily for you.

Q. Have you gone over the record with that in view?

A. No, not with that in view I haven't. I didn't know that that would be necessary or I would have gone over it.

Q. So that not having examined it with reference to that, you wouldn't know?

A. Well, except as I would know from the returns that were made to me in my office.

Q. Now, is your testimony the same with reference to your judgment as to item No. 6?

A. The same. Now, when "individual" is named, individual may mean a concern doing business in an individual name, and in the recapitulation there that would appear as an individual, but it may possibly be a concern.

Q. Oh, yes, of course, I understand that. Is it not true that there are companies in this city organized to accept chattel mortgages upon automobiles?

A. It is.

Q. And that a large number of automobiles are sold in this manner; the purchaser pays as much upon the automobile in cash as he can afford, then this company accepts a chattel mortgage for the balance and the entire cash goes to the dealer in the automobile, while the chattel mortgage company holds the mortgage as security for its advancement?

A. It has been a very difficult thing, Mr. O'Brien, for me to get the chattel mortgage question on the part of automobile dealers. They take the security and may be paying what he can on the automobile. These securities are taken, and in many cases it is claimed that those securities are sold outright to a bank. I have no means of investigating that to find out exactly what the method is. And we have

had a great deal of trouble in our office regarding that one item on automobiles. Of course there is no trouble regarding other classes of chattel mortgages.

Q. ~~Q. I know that there are chattel mortgages upon~~ automobiles representing millions of dollars, do you not?

A. I presume so. I don't know the figure.

Q. In this county?

A. No, I do not know that.

Q. Representing a very large amount?

A. I know it is a very large amount.

Q. And they are not taken into consideration in this analysis that you have made here on the chattel mortgages given by furniture companies?

A. No. There are some of the automobile chattels that are taken in there but not many of them. They claim that those are all sold to the banks.

Q. Are there not, in this county and city, companies doing exclusively a chattel mortgage business, loaning money upon chattel mortgages?

A. Not that I know of, not exclusively.

Q. You know that there are what we used to call the ten per cent a month sharks?

A. Yes, I do.

Q. They are still operating to some extent?

A. To some extent.

Q. And you know that there is a company organized in this city for the purpose of lending to people of small means money upon chattel mortgage security at a reasonable rate, do you not?

A. I do.

Q. Your former partner, I think, was a member of that—

A. Yes.

Q. Is that company report in here?

A. Yes.

Q. That money is money directly advanced?

A. That company is in here and we tried to assess all the other companies, Mr. O'Brien, but I understand that they don't pay their taxes. That company does, but the other companies do not.

Q. I am not asking for the other companies, but there is such money as that, and there is this very excellent company that you merchants organized which is doing business still in the state?

A. They pay their taxes and make return.

Q. Take chattel mortgages and pay its taxes?

A. Yes, sir.

Q. So that is included in this property?

A. That is included in this.

Q. Now, assuming that the returns reflected business transactions, you know that there is an immense amount of money loaned from individuals to individuals throughout the city on reasonable interest from relatives and from friend to friend that does not appear in the bank statement and things of that sort, don't you?

A. No, I do not know personally. I presume it is so, but I do not know it personally.

Q. You don't know that that is a common thing?

A. I know it is common talk but—

Q. Are there any cattle mortgage companies in Ramsey county, companies loaning money upon security or chattel mortgages upon cattle?

A. Not that I know of.

RE-CROSS-EXAMINATION

By Mr. Ryan:

Q. Mr. Young, I asked you to give the aggregate money and credits assessment against investment companies and you gave that to me. Are there any individuals who have

reported money and credits for assessment whom you would add to that class?

A. No, I think not.

Q. So that when you gave, in answer to my question, the aggregate returns of investment companies, you gave, so far as you could, the aggregate returns of individuals and corporations and investment companies so far as you could?

A. I did.

Q. And then this one other question. This loan company which you say is included in the list, I believe that is the Provident Loan Company, is it not?

A. Yes.

Q. And that was a small corporation—do you recall the capital of that company?

A. I do not. It was a small amount.

Q. This is true, is it not, that that was—

A. My opinion is \$50,000, but I will not be sure that I am right on that.

Q. That was not organized as a money-making enterprise, was it?

A. It was not.

Q. It is rather a benevolent institution formed for the purpose of protecting employees against loan sharks?

A. It was really brought about, Mr. Ryan, by the fact that I discovered, in the old concern of Finch, Young & McConville, that about ninety per cent of our employees were in the hands of the loan sharks, and I immediately settled the matter. I mean that I paid treble the amount that they had actually advanced. We had some people there who had borrowed \$100 and received only \$90 and they still owed \$100. They might pay back \$90 and they still owed \$100 and those people I settled with for nothing. Then I advanced money for all the employees and they have paid it

off as they could, and that was really the starting-point of the organization of that company.

Q. It was organized for that purpose, and it is still being conducted?

A. My understanding is. I know nothing about it now except in a general way. It was organized purely for benevolent purposes to prevent that frightful condition.

L. C. SIMONS,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Where do you live?

A. In St. Paul.

Q. And what is your business?

A. I am president of the Twin Cities National Bank.

Q. That is a bank located at Midway in this district?

A. It is located in what we call the Midway district in St. Paul.

Q. What is the capital of that bank?

A. \$200,000.

Q. And surplus?

A. \$50,000.

Q. Undivided profits?

A. About \$10,000.

Q. It is a national bank organized under the laws of the United States as a national Bank?

A. Yes, sir.

Q. What are the holdings of that bank in real estate mortgages?

A. At the present time?

Q. Yes.

A. Approximately \$70,000.

Q. And what were its holdings in real estate mortgages on the 1st of May, 1921?

A. About from seventy to ninety thousand.

Q. May 1, 1922?

A. About the same amount.

Q. Do these amounts represent the entire dealings of the bank in real estate mortgages?

A. No; those represent the amount of mortgages that we have on hand or had on hand at those dates.

Q. Now, I assume that the bank does the ordinary business of receiving deposits and loaning money, and commercial paper?

A. Yes, sir.

Q. Issuing time checks?

A. Time certificates, yes.

Q. Certificates of deposit?

A. Yes.

Q. Have you a savings department in your bank?

A. Yes.

Q. What other business transactions are carried on by the bank?

A. You mean what securities that we invest our funds in? Commercial paper, notes of customers, government bonds, county warrants, village warrants, school districts orders, occasional small amounts of city loans within legal requirements.

Q. Do you deal in industrial bonds, bonds of corporations, private corporations?

A. Yes, sir.

Q. Have you bought and sold such bonds as that?

A. Yes. I wouldn't say that we sold those bonds. We bought them for our own investment.

Q. In the other classes of securities, what do you mean by dealing in them? Do you buy them or wait until they are paid?

A. In case of mortgages chiefly we buy them and sell them to investors who come to us for investment.

Q. What is the average maturity of your farm mortgages?

A. Most all run five years.

Q. And this \$70,000, how much are farm mortgages?

A. They run most all five years.

Q. I say of the \$70,000 mortgages that you have, how many, what is the aggregate amount of the farm mortgages?

A. Well, I meant that about \$70,000 is the amount of farm mortgages.

Q. Have you in addition to that any city mortgages?

A. Yes, a few; perhaps from five to ten thousand dollars. We can't take city mortgages running longer than a year, so the amount is small.

Q. What was the amount of your holdings in United States government bonds on May 1, 1921?

A. I would say upwards of \$300,000.

Q. On May 1, 1922?

A. About the same amount. It varies somewhat. About that.

Q. And at the present time?

A. It happens to be just \$300,000 at the present time.

Q. How long have you been president of the Twin Cities Bank?

A. Ever since its organization. Our bank first organized as a state bank in 1908, and converted into a national about three years ago.

Q. And how long have you been engaged in the business of banking in Minnesota?

A. About thirty-nine years, I am sorry to say.

Q. Will you state with what money investments, moneyed capital and business transactions that a national bank comes into competition in this state.

A. Generally speaking, it comes into competition with every other person and corporation that is in the market to loan money within the limits that we are permitted to

lend by law. I mean by that we can't take mortgage loans for longer than five years nor city loans for longer than one.

Q. What do you mean by every person who lends money?

A. Most everybody that is in the market to lend money wants to lend it, and we want to lend it, and there is competition there, in regard to the matter of rates in our neighborhood.

Q. Under what class do you place people that purchase mortgages from them?

A. They are investors who want to invest their funds, apply sometimes to us, sometimes to other people.

Q. Do you call that lending money?

A. On their part.

Q. Yes.

A. Yes.

Q. That is what I want to ask you; what you mean by lending money: Do you mean buying securities is lending money? You used the term lending money as including the purchase and investment in securities.

A. Yes.

Q. So that your answer is that every one who makes an investment in a security because of the return that he will receive in interest for that security is lending money?

A. Yes.

Q. Is in competition with the bank?

A. Yes.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Do you consider that the man who comes into your bank and buys the mortgages which you have for sale is in competition with you?

A. He isn't in competition with us, the moment he applies to us, I suppose.

Q. What is that?

A. He wouldn't be in competition with us when he is buying securities from us. I take it, that he would be in competition with other banks when he is buying securities from us.

Q. That is your idea of the manner in which that individual having funds to invest comes in competition with national banks?

A. Yes.

Q. Is that the only tangible, definite way that you think of in which he does come in competition with national banks?

A. No, we have people come to us from, we will say, country banks, write to us asking us what we will give them for certain securities they hold. They get quotations from other banks and from other individuals, from investment companies, and sell those securities where they can get the best bargain. Sometimes we buy them. Sometimes we make a quotation and don't get them.

Q. Can you definitely illustrate or point out in what other respect individuals are in competition with national banks in respect of money which they have to loan on investments?

A. Individuals buy commercial paper from brokers the same as we do.

Q. Brokers buy commercial paper?

A. Individuals buy commercial paper from brokers. Brokers offer their paper to individuals as well as to the bank.

Q. Do you know that to be true, Mr. Simons, or is that just a general impression?

A. I know that to be true.

Q. You know individuals who do buy commercial paper from brokers?

A. Yes.

Q. Do you know how extensive that is?

A. I couldn't say how extensive that is, no sir.

Q. To what extent, during the year 1921, can you say within your knowledge that any individual in Ramsey county did buy commercial paper?

A. I couldn't tell you to what extent, Mr. Ryan. I often have conversation with our customers who tell me that they have bought certain commercial paper from commercial paper houses.

Q. Individuals customers?

A. Individual customers, yes.
the extent of that?

Q. But you are not able to give us any statement as to

A. No, I can't give you any computation on that.

Q. Can you point out definitely any other respect in which individuals with money to invest or to loan come in competition with a national bank?

A. Yes, individuals through savings accounts, they come in competition with banks. They will either deposit their money with us or buy securities from somebody else.

Q. Can you point to any other definite, tangible instance in which individuals such as you speak of, individuals with money to loan or invest, come into competition with national banks?

A. Yes, many individuals and companies invest in tax certificates. We do the same.

Q. Any other specification?

A. I am not thinking of any other this minute.

R. C. LILLIBRIDGE,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Mr. Lillibridge, what is your business?

A. Auditor of the First National Bank of St. Paul.

Q. Where do you reside?

A. In St. Paul.

Q. What is your age?

A. Thirty-six.

Q. How long have you occupied the position of Auditor of the First National Bank?

A. I have occupied that position since December, 1920.

Q. Before that time what was your business?

A. I was assistant National Bank Examiner, assisting Chief National Bank Examiner of the Ninth Federal District.

Q. I can't hear you.

A. I was Assistant National Bank Examiner assisting the Chief National Bank Examiner of the Ninth Federal Reserve District.

Q. Minnesota is part of that district, is in that district?

A. Yes, sir.

Q. And where were your headquarters?

A. In Minneapolis.

Q. How long did you occupy that position?

A. About fourteen months.

Q. And before that what was your business?

A. Prior to that for a little over a year I was in the United States Navy.

Q. In what position?

A. I enlisted as a gob or ordinary seaman.

Q. What were you doing?

A. Musician most of the time in the Navy.

Q. And before that what was your business?

A. In the banking business.

Q. Where?

A. In southern Wisconsin.

Q. Are you familiar with the books and records ordinarily kept by National Banks?

A. I am.

Q. And other banks, state banks?

A. Yes, to a certain extent.

Q. You are not a certified public accountant?

A. No, sir.

Q. But are you an accountant?

A. Yes, in a way, I feel that I am.

Q. Bookkeeper?

A. Yes, sir.

Q. Have you made certain tabulations with reference to the banks and investment companies of the state of Minnesota?

A. Yes, I have done that.

Q. Will you produce your table entitled Comparative Figures in Thousands showing condition of National Banks in Minnesota April 28th, I think it is, 1921, and May 5, 1922? Mr. Ryan has furnished me with certain of his tables and I am inclined to reciprocate, and I think counsel has a copy of this (Deft's. Ex. M). Will you please state what Ex. M shows.

A. Ex. M shows comparative abstract in thousands the condition of national banks in the state of Minnesota as of April 28, 1921, and May 5, 1922.

Q. The heading of this recites that it is shown in thousands?

A. Yes, sir.

Q. Therefore, to get at the correct amount of each of those items, three ciphers are to be added?

A. That is right.

Q. The first column of Ex. M shows what?

A. Loans and discounts.

Q. No, the first column.

A. The first column shows the banks in Minnesota.

Q. That is outside of St. Paul or Minneapolis?

A. Yes, sir.

Q. Is that outside of the corporate limits of the cities or outside of the counties of Hennepin and Ramsey?

A. That is outside of the reporting banks in Minneapolis and St. Paul.

Q. Outside the cities of St. Paul and Minneapolis?

A. Yes.

Q. The first column shows the resources and liabilities of all of the national banks in Minnesota outside of St. Paul and Minneapolis?

A. Yes, sir.

Q. And the second column gives the same information with reference to the banks in Minneapolis?

A. That is right.

Q. The third column gives that same information with reference to the banks in St. Paul?

A. That is right.

Q. And the fourth column gives that same information as to all of the national banks in the state of Minnesota?

A. That is right.

Q. Of April 28th, 1921?

A. Correct.

Q. Now, the fifth column corresponds with the first column except that it is at the date of May 5, 1922?

A. Yes, sir.

Q. The sixth column corresponds with the second column except as to that date?

A. That is right.

Q. The seventh column corresponds to the third column?

A. That is right.

Q. And the eighth column corresponds to the fourth column?

A. That is right.

Q. Then you have a summary of those amounts at the bottom of the exhibit?

A. Yes, sir.

Ex. M was received in evidence without objection.

Q. From what is this information taken?

A. This information is compiled from the abstract of condition of national banks published by the Comptroller of the Currency and is his report to Congress.

Q. It is from the report of the Comptroller of the Currency?

A. Yes, sir. May I amend that statement. Those, of course, are compiled from the abstract of the condition of national banks published by the Comptroller of the Currency under Nos. 130 and 138, and not taken from his report to Congress.

Q. (Ex. N. shown witness.) What is that?

A. Ex. N, abstract of loans in thousands secured by real estate held by national banks in the state of Minnesota on June 30, 1921, and June 30, 1922.

Q. From what is that statement prepared?

A. This statement is prepared and computed from the annual report of the Comptroller of the Currency made to Congress.

Q. The first column in the upper half of the exhibit shows what?

A. The first column shows the real estate loans held by banks, national banks, in the state Minnesota on June 30, 1921.

Q. Outside of St. Paul and Minneapolis?

A. Yes, sir.

Q. The second the amount in Minneapolis, and the third column the amount in St. Paul?

A. That is right.

Q. And the fourth column the total?

A. That is right.

Q. And the lower half of the sheet, the second division of the sheet Ex. N gives the same information in the same way as of June 30, 1922?

A. That is right.

Q. And the total mortgages so held at that date, amounted, according to this exhibit, to \$75,409,000?

A. For June 30, 1922, yes.

Q. In this case also the amount is shown in the thousands so three ciphers should be added to get the exact amount?

A. That is right.

Ex. N offered and received without objection.

Q. Ex. O shown to witness. Please explain Ex. O.

A. Ex. O is an abstract showing the total individual deposits, United States bonds and securities, state of Minnesota bonds and municipal bonds of the state of Minnesota held by banks in Ramsey county on May 1, 1921, and May 1, 1922.

Q. That applies to both state and national banks, does it not?

A. Yes, that applies to all banks in Ramsey county, with the exception of one, I think. It was impossible to get the figures from one bank.

Q. What is that?

A. With the exception of one bank.

Q. Under the heading "State of Minnesota bonds" and "Municipal bonds" what have you included there?

A. That includes all of the bonds held by the respective banks on those dates other than United States bonds and securities.

Q. Does it contain all of the other bonds and securities, or is it limited to those municipals?

A. No, this contains just the state of Minnesota and state of Minnesota municipal bonds held by the banks under those dates.

Q. How did you obtain the information for the preparation of this tabulation?

A. This information was obtained from the banks themselves.

Q. Did you visit each bank?

A. I either visited each bank or called them by phone or got the information by letter.

Q. And was this prepared by you in exact conformity with the information you received as to those banks?

A. It was.

Q. And you believe it to be a true statement?

A. Yes, sir.

Q. As to the matters therein stated?

A. Yes, sir.

Ex. O was offered and received without objection.

Q. Ex. P shown witness. Ex. P, as I understand it, is and contains the details of the totals given upon Ex. O?

A. That is correct.

Ex. P offered and received in evidence without objection.

Q. Ex. Q shown witness. Will you please state what Ex. Q is?

A. Ex. Q shows the aggregate dealings in the local investment market of the years 1921 and 1922.

Q. How was this statement prepared and from what data?

A. This statement was prepared from the monthly bulletins issued by the Federal Reserve Bank, and contains information and figures that they have received from eighteen investment houses located within the Twin Cities only.

Q. Are they all Minnesota corporations?

A. No, of the eighteen.

Q. Did you get any information as to which was Minnesota corporations?

A. I have. Of the eighteen investment houses reporting to the Federal Reserve Bank eleven of these investment houses are firms incorporated under the laws of the state of Minnesota.

Q. From whom did you receive that information?

A. I received that information from Mr. Ebersole, assistant Reserve Agent in whose department these figures are compiled.

Q. Did you visit the Federal Reserve Bank for the purpose of obtaining these figures?

A. I did.

Q. And did you examine the records of that bank?

A. I did.

Q. And the reports of the companies made to the Federal Reserve Bank?

A. Yes, I have copies of reports with me.

Q. And had the assistance of the head of that department in preparing these statements?

A. Yes, sir.

Q. And was this statement truthfully and correctly compiled from the best information you could obtain of the Federal Reserve Bank?

A. It is.

Q. And it is correctly stated on Ex. Q?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Ex. Q offered and received in evidence without objection.

Witness: I am going to add a little to my statement.

Q. If there is anything you want to add, Mr. Lillibridge, add it.

A. The eleven banks that I have mentioned and incorporated under the laws of the state of Minnesota reporting to the Federal Reserve Bank and whose figures are included in this total on Ex. Q represent ninety per cent.

Q. You said eleven banks?

A. Eleven investment houses.

Q. You didn't intend to use the word "banks"?

A. No. Their figures represent ninety per cent of the total figures reported.

Q. Ex. R shown witness. Please explain what Ex R is.

A. Ex. R shows in total the aggregate dealings in cattle loan paper of three of the larger cattle loan investment companies operating in Minnesota for the years 1921 and 1922.

Q. Where did you obtain the information contained in Ex. R?

A. This information was obtained from officials of the different companies whose totals are included in these totals.

Q. Are each of those companies organized under the laws of Minnesota?

A. No; two companies are organized under laws of Minnesota.

Q. And a third is organized under the laws of some other state?

A. West Virginia.

Q. And is operating here in Minnesota?

A. Operating.

Q. And it contains the aggregate of all of them?

A. That is correct.

Q. Is this statement truthfully compiled from the information which you obtained?

A. Yes.

Q. And that is the best information you could obtain?

A. Yes.

Ex. R was offered and received in evidence without objection.

Q. Ex. S shown witness. Will you please state what Ex. S is?

A. Ex. S is an abstract showing total capital surplus and undivided profits, real estate, United States bonds and securities and state of Minnesota bonds and securities held by banks in Ramsey county on May 1, 1921, and May 1, 1922.

Q. Both state and national?

1
8
7

A. Yes, all banks with the exception of—

Q. What about savings banks and trust companies?

A. It includes all national banks, all state banks, and three savings banks and trust companies.

Q. You have included the savings banks having capital stock?

A. Having capital stock, yes, that is the idea.

Q. And then at the bottom is a recapitulation of those items?

A. Yes, sir.

Q. Now, to understand this, in the first column of figures appears the total capital, surplus and undivided profits of national banks in the county of Ramsey?

A. Yes, sir.

Q. \$14,009,788.21?

A. \$14,009,788.21.

Q. The aggregate real estate holdings by those banks is \$2,876,697.69?

A. That is right.

Q. Leaving for the aggregate amount upon which taxes were computed, \$11,133,090.52?

A. That is right.

Q. Those same banks, national banks, on May 1, 1921, held United States government securities to the amount of \$8,952,254.81?

A. That is right.

Q. And municipal bonds and securities in the state of Minnesota in the amount of \$653,600?

A. That is right.

Q. Now, further along upon the same sheet that same information is repeated for May 1, 1922?

A. Yes, sir.

Q. And in the next division that same information is given for state banks?

A. That is correct.

Q. In the aggregate. And then finally at the bottom there is a recapitulation?

A. Yes, sir.

Q. What was this table Ex. S compiled from?

A. The first two columns representing capital, surplus and undivided profits, and the real estate was compiled from the personal property tax returns submitted by those institutions.

Q. Found in the Auditor's office in this county?

A. Yes, sir. The third column was computed by myself. The fourth and fifth column, showing the United States bonds and securities held and the state of Minnesota bonds and securities held, that information was obtained from the banks themselves.

Q. Contained in one of these former tabulations that you have presented?

A. Yes, and that holds true of the figures representing May 1, 1922, also.

Q. Is that table Ex. S correctly compiled from the information you so received?

A. Yes.

Ex. S was offered and received without objection.

Recess until 2 p. m.

Q. Deft's. Ex. T shown witness. Will you please state what Ex. T is.

A. Ex. T represents the comparative statement showing the condition of the First National Bank of St. Paul as of May 1, 1921 and May 1, 1922.

Mr. O'Brien: Mr. Ryan, is that statement in the form in which you desire it?

Mr. Ryan: Yes; the State will offer in evidence Ex. T.

Mr. O'Brien: It is an admitted statement which was prepared at the request of the State, but we would just as soon offer it. It is marked Ex. T, so it will be offered in evidence.

Q. Calling your attention to Defts. Ex. Q, aggregate

dealings in local investment markets for the years 1921 and 1922, what do you mean by local investment market?

A. That means just what the name implies, local investment market in the Twin Cities, St. Paul and Minneapolis.

Q. And you say this exhibit was compiled from reports made by some eighteen companies to the Federal Reserve Bank of this district.

A. That is correct.

Q. Did those reports include all of the investment companies?

A. No, it just included those eighteen that the Federal Reserve Bank has gotten to report figures to them.

Q. Does your tabulation include all of the reports made to the Federal Reserve Bank?

A. It includes the eighteen that reported to them continuously through the two years, yes.

Q. But all of the investment companies have not reported to the bank?

A. No.

Q. Do you know, in a general way, from your experience of banking and from the investigation which you have recently been making, whether or not there is a considerable amount of money loaned on unsecured commercial paper through brokers?

A. Yes, I do; and I might say in that connection, too, that the commercial paper sales are not included in these figures.

Q. Are not included in the figures given on Ex. Q?

A. No.

Q. Are there any corporations in Minnesota dealing in commercial paper?

A. Yes.

Q. Have you ascertained the amount of capital stock of any such corporation?

A. One that I have in mind, yes.

Q. How much?

A. That has a capitalization of \$250,000.

Q. Located in the Twin Cities?

A. Located in the Twin Cities.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Have you any objection to giving the name of the corporation which you have just referred to?

A. I would rather not unless it is absolutely necessary.

Q. It isn't a trust company?

A. No, it is strictly a corporation.

Q. Does its corporate name indicate the nature of its business?

A. No, I do not think it does.

Q. An assessing officer or public official having only the name of the concern before him would not recognize it as a company engaged in the business which you have described?

A. The name is so well known, I think he would.

Mr. O'Brien: I think you better give the name. What was the name of the company?

Witness: Lane, Piper & Jaffray, incorporated under the laws of the State of Minnesota.

Q. Where is its principal place of business?

A. Minneapolis.

Q. Referring to Ex. Q, you have a statement of dealings in the local investment market as reported by different investment houses. What do you include in investment houses?

A. The different investment houses reporting to the Federal Reserve Bank do so in strict confidence. The names of those different houses were not revealed to me, although I understand it to mean houses that deal in these different

classes of securities enumerated under this schedule, buy and sell those securities.

Q. Do you know whether or not it includes trust companies?

A. I presume it does.

Q. Include banks?

A. It doesn't include banks, no.

Q. Do you know why that distinction is made in gathering those statistics?

A. No, I do not.

Q. Include savings banks?

A. I assume not. I am not sure, but I would say not, from my information.

Q. Do you know whether any of those investment houses are located in St. Paul, in Ramsey County?

A. Yes, I think they are, although I don't know the names,, but I know the endeavor of the Federal Reserve Bank is to get all of these principal houses to report to them so they can obtain a line on how many sales of this character is going on in the Twin Cities.

Q. And do you know whether or not these so-called investment houses, in all instances, are corporations?

A. Eleven out of the eighteen reporting to the Federal Reserve Bank, I am informed are companies incorporated under the laws of the State of Minnesota.

Q. As to the others, are they corporations or individuals?

A. The other seven firms are represented by branch sales offices of corporations in other states, and the remainder are partnerships or unincorporated companies of this state.

Q. I understood you to say awhile ago that eleven were Minnesota corporations, and you desire to correct that?

A. No, that is correct; eleven firms are known to be Minnesota corporations.

Q. So that eleven Minnesota concerns are all corporations?

A. Of the other seven, several are branch sales offices of corporations in other states and partnerships or unincorporated companies of this state. Now, I don't know just what that split in the seven is.

Q. You haven't any information, have you, as to the distribution of these mortgages and other investments in respect to whether or not they went to Minnesota individuals or Minnesota corporations?

A. I have not, only in the general way as shown by the schedule.

Q. That is the distribution among dealers, bankers and the general public, but there is no indication as to the territory?

A. No. There is no indication as to territory.

Q. There is the item, "Average per cent of total sold to other dealers." Do you know what kind of concerns the word "dealers" includes?

A. Why, I think it is just the sales of possibly one investment house to another. One investment house may be handling a certain class of securities and another investment house may want some of that particular kind of security for a client. The other dealer probably sells him some of those securities.

Q. By investment houses, you include trust companies?

A. Yes.

Q. Now, turning to Ex. R, will you state whether or not any of those capital loan and investment companies are operating in Ramsey county?

A. They all are operating in Ramsey county.

Q. Have any of them their principal place of business in Ramsey county?

A. I would say they all have.

Q. Are you sure of that?

A. Yes. They all are. Their principal offices are in Ramsey county, St. Paul and South St. Paul.

Q. South St. Paul isn't in Ramsey county.

A. Well, I will amend my statement then to that effect. I know that it isn't now that you call my attention to it, but I was thinking of it in that way. No, one company. Its principal office is not in Ramsey county. No, two companies are not. Their principal offices are not in Ramsey county. One is.

Q. Is the one located in Ramsey county a Minnesota corporation?

A. Yes.

Q. Do you know the name of that company?

A. Yes, that is the Capital Loan & Investment Company.

Q. Is that affiliated in any way with the Capital National Bank or the Capital Loan & Trust company?

A. I don't think they are affiliated. The bank and the company I do not think is affiliated in the sense that the bank owns the stock of the other, or vice versa. In fact, I am not really informed on that particular point.

Q. You do know that there is some relationship between the two companies?

A. I think so.

Q. That this Capital Loan & Investment Company is in some way connected with the Capital National Bank?

A. I think so.

Q. Also with the Capital Trust & Savings Bank?

A. That is just my assumption.

Q. Well, it can stand that way. If you should discover that your assumption was wrong, it may be corrected.

Mr. O'Brien: Yes.

Q. You have a distribution, "Amount sold to individuals of Minnesota," total amount sold to individual firms, corporations and banks in Minnesota?

A. Yes.

Q. You don't know what the amounts sold to banks and corporations in Minnesota were, do you?

A. Yes, by making a deduction of the second from the third item.

Q. That would be true if you have included in your sales to individuals sales to firms in Minnesota.

A. Well, yes.

Q. You use the word "firm" and "individuals" indiscriminately, do you?

A. Yes.

Q. In the line, "Amount sold to individuals in Minnesota" you include all sales to individuals and partnerships?

A. That is correct.

Q. You don't know what amounts were sold to individuals or partnerships in Minnesota, do you?

A. No, I did not get that segregation.

CYRUS P. BROWN,

sworn on behalf of defendant, testified:

By Mr. O'Brien:

Q. Your name is Cyrus P. Brown?

A. It is.

Q. What is your age, Mr. Brown?

A. Fifty-five years old, sir.

Q. And you are a resident of St. Paul, Minnesota?

A. Yes, sir.

Q. What is your occupation?

A. I am president of the First National Bank.

Q. The defendant in this action?

A. The defendant in this case.

Q. How long have you occupied that position?

A. I have been Vice-president and President for the last nine years, about half in each position.

Q. You have been connected with the First National Bank for the last nine years?

A. Nearly ten years.

Q. And prior to that time what was your business?

A. Banker in Providence, Rhode Island.

Q. And how long have you been a banker, all together?

A. Thirty-five years, or more.

Q. What position did you occupy in the bank in Rhode Island?

A. I was a director in several banks, and President of the Industrial Trust Company, a large banking corporation there.

Q. You are generally familiar with the business of banking?

A. I am.

Q. As conducted by national banks and state banks?

A. I am.

Q. Also familiar with the business carried on by trust companies?

A. I am.

Q. Investment companies??

A. I am.

Q. Mr. Brown, it has been testified here that in the state of Minnesota, in St. Paul, there is a great deal of money loaned to mercantile establishments, manufacturing establishments, through note brokers.

A. That is true.

Q. Is that true?

A. That is true.

Q. Now, some concerns which negotiate such loans as that also have lines of credit in different banks?

A. They do.

Q. Now, how is that operated? What is the general course of procedure?

A. That operates to make a very difficult and hard competition for the bank. The practice is for those jobbing houses, in St. Paul and Minneapolis, to go to their local banks and secure a line of credit. That, from the standpoint of the jobber, is a call on a certain definite sum of money, no matter what may happen in good times or bad times; he then, in good times, when the banks wish to loan money, goes to the note broker and sells his note, because he always has a call upon the bank for that definite sum of money. We often have the experience—we have within a few weeks—we call up a local customer and say, "We would like to loan you some money," and he will say, "I am not using good money" but will get the offerings from a note broker with some man's paper. In that way it makes a very difficult and hard competition for us. Of course, when we wish to loan money, the note brokers take our place. Where they are not so anxious to loan money, the jobber or customer comes to us and makes us step in the gap. That happened very noticeably during the stringency of 1920 and 1921 when it was difficult for note brokers to place paper, and in many cases we were obliged to increase these lines of credit that we had in these various houses.

Q. Has the First National Bank of St. Paul engaged to any extent in the business of loaning money upon real estate mortgages?

A. Not to any great extent, no.

Q. Has the Bank acquired mortgages to secure past-due indebtedness?

A. Yes, and we loan our country correspondents very frequently on mortgages. We carry mortgages in that way.

Q. How about loaning money upon collateral security where the collateral consists of notes secured by real estate mortgages?

A. Yes, we loan quite a little that way.

Q. National banks, however, are authorized to loan money upon real estate security?

A. Yes, we are authorized to loan within the radius of 100 miles or say possibly up to twenty-five per cent of our capital or one-third of our time deposits.

Q. Now, not speaking of the actual practice of the First National Bank, but referring to national banks generally, how is the money loaned upon real estate security in competition with the business of national banks?

A. The national banks are, you might say, substantial reservoirs of credit. Almost every individual is, to a greater or less degree, a smaller reservoir of credit. If he loans money on a mortgage or on a bond to his brother or his cousin or his aunt, or to anyone else, that is in competition with us, because it takes from us a possible customer. We often have cases where a man will check money out and loan a relative. We happened to know of the transaction. So it acts in both ways. It takes money out of our bank, and of course, in the aggregate, that is a very large amount.

Q. State whether or not the rate of interest charged upon loans made upon real estate security, and the rates of interest charged upon unsecured commercial paper bear any relation to each other.

A. The rate of interest charged upon real estate security would be higher than that charged upon commercial paper.

Q. Do they bear any relation to each other?

A. Any fixed relation?

Q. No, I am not talking about that. Any effect upon the other?

A. Yes, certainly, any money loaned would have an effect. If a man couldn't borrow on a mortgage he would borrow on somebody's endorsement.

Q. For instance, if all of the banks in a given territory were to charge ten per cent upon bank loans, and at the same time money could be obtained upon real estate secur-

ity for five per cent, would that affect the amount of loans made by the bank?

A. It certainly would.

Q. And supposing the reverse were true, that loans upon real estate could be obtained for two or three per cent, while the banks were charging six or seven per cent, might that affect the amount of money which the bank would loan?

A. Yes.

Q. Do the national banks of Minnesota, including the First National Bank, deal in bonds, municipal bonds?

A. Yes.

Q. Of the state of Minnesota?

A. To a greater or less degree, yes.

Q. Is it or is it not true that when an issue of bonds is made, the First National Bank of St. Paul is sometimes a bidder?

A. Occasionally a bidder, yes.

Q. What was your experience, a few days ago, with reference to some bonds of the city of St. Paul?

A. We bid and lost.

Q. How large an issue of bonds was that?

A. One million dollars.

Q. And you were bidding in connection with some other institution, were you?

A. Yes, we were bidding in conjunction with three or four others.

Q. Probably a smaller bid and you lost, or higher bid. I guess the highest bid gets it, doesn't it?

(No answer.)

Q. Now, does the money generally outside of banks invested in municipal and corporate securities come into competition with the national banks?

A. Why, any money invested in corporate securities or any other kind of securities comes in competition with any-

one who loans money on those securities or on other securities—can't help doing so.

Q. And that applies to all of the securities held and dealt in by national banks?

A. Yes.

Q. Real estate mortgages, municipal bonds?

A. Yes, anything that takes money.

Q. What is that?

A. Anything that takes money, because that is the commodity we sell. The commodity furnished by anybody else is in competition with us.

Q. Do the current rates charged for the loan of money vary?

A. Vary from time to time, yes, according to the supply and demand.

Q. What is that?

A. They would vary according to the supply and demand.

Q. And upon what class of securities do they vary? Do they vary in bank loans?

A. They vary in bank loans and they vary with the degree of the security of the quality of the security, perhaps I should say.

Q. Well, at these periods do the rates which can be made upon municipal securities change?

A. Yes.

Q. For instance, at one period of one year, the City of St. Paul might be able to negotiate its bonds at one rate; is that true?

A. Yes.

Q. And the next year, at a different time, not be able to obtain as good a rate?

A. That is true.

Q. And do the values of the securities themselves vary from time to time?

A. They do.

Q. Is it true that a bond or a security which one year might be sold so as to return a given net return to the investor of five per cent, the next year, under other conditions, could not obtain a better price than one which would return seven per cent upon the investment?

A. That might be true.

Q. But there is some variance at different times?

A. There is from year to year.

Q. What causes that variance?

A. The law of supply and demand, naturally.

Q. Do you mean by that, the amount of money available in investment as compared with the amount of money required by borrowing—

A. That is exactly it.

Q. So that the more available money there is in any community, in any state or in any country for investment, for loan and interest, affects the rates?

A. It does.

Q. And state whether or not in that way all of the money of any community or state or country necessarily is in competition.

A. It is.

Q. And each investment, to a greater or less extent, is of that—

A. Each investment.

Q. —character, each investment of money, for the purpose of receiving in return interest computed upon that money, is in competition with every other item of money similarly invested; is that the case?

A. That is correct.

Q. Now, Mr. Brown, I would be very glad if you would go on and explain this in your own way any further.

A. Why, as far as competition is concerned, the banking business is one business in the world that almost anyone

can compete with without a sign, without even an office. If a man has an apple stand on the street, he has to get his location, get his merchandise and do business, but a man can compete with a bank with simply some money in his pocket. If he makes a loan to his brother, to his cousin, to his aunt, to his father, that loan is in competition with the bank because it takes from the bank the possibility of loaning its own money to that person.

Q. There is one other form of competition that I would like to call your attention to and get your judgment upon. Is it true that the investment of money by individuals or firms or corporations in securities such as real estate mortgages, municipal bonds, corporation bonds, United States government bonds, and warrants, reduces the amount of deposit in the banks?

A. It certainly does. In other words, if people don't put it in an investment they would keep it on deposit in the bank. People who invest money very rarely keep money elsewhere than on deposit in the bank. They don't keep it in their house or in their cellar or places like that. Take a man who is intelligent enough to invest his money, he puts it in a bank. When he makes an investment he draws it out of the bank.

Q. But I presume where the investment is made in a security issued in the same locality, that the proceeds of that investment come back to the bank from the seller of the security, do they not?

A. Well, very seldom a person borrows money to put it on deposit in the bank. If it is a corporation, and he is buying material or buying machinery, very seldom that the money stays in the bank.

Q. Have you had occasion to examine the financial statements of various mercantile institutions in St. Paul?

A. I have.

Q. And many of those in Minneapolis?

A. I have.

Q. And other parts of the state?

A. Yes. We get them at regular intervals where they are our customers.

Q. From those examinations, are you able to form an approximate estimate of the amount of money loaned to mercantile and manufacturing institutions in this state through note brokers upon their unsecured paper?

A. I would be able to get the amount. It probably wouldn't be anything like the true amount because it wouldn't be large enough.

Q. An approximation of it, the smallest amount?

A. Not less than 50 million dollars.

Q. In a year?

A. In a year.

Q. That goes on from year to year, does it?

A. That goes on from year to year.

Q. Now, is this the state that you are giving, the fifty million, the state of Minnesota?

A. Yes.

Q. Can you give us an approximation for the city of St. Paul?

A. Half of that; 25 million, I would say. Perhaps I should correct that, perhaps 15 million. I have no way of knowing the exact amount. Those figures are under rather than over.

CROSS-EXAMINATION

By Mr. Ryan:

Q. Mr. Brown, just before going into this question of competition, a question or two concerning the bank itself. Can you give us the approximate value of the capital of your bank per share as of May 1, 1921?

A. Well, on May 1, 1921, approximately \$200 a share. You mean the liquidated value?

Q. The fair market value.

A. Well, the only sales I have known of have been for \$205 a share for some time. That has been the only figure I have known. Substantially \$200 a share.

Q. That would be true for May 1, 1922?

A. That would be true for May 1, 1922.

Q. Now, when you speak of the competition of money in loanable funds generally of the national banks, you don't particularly speak of a competition which you can directly and tangibly feel at your bank, do you?

A. Oh, yes, indeed, we can feel it. Of course we can feel it.

Q. That is, you feel it in respect to the—

A. We know there is a large volume of money loaned to our customers that we ourselves should loan. Just as an instance of that: Just before coming here the other day, I took at random eleven statements of borrowers of ours and I found nearly a million and a half dollars loaned to them by the officials or employes of companies. There is a case where we would directly feel it. That is money that we would naturally loan ourselves, but it is loaned to them by the individual.

Q. The loans which you lose—you have instanced one—speaking of 1921, can you specify more particularly how you lose loans that you would otherwise have made?

A. Well, it would be difficult at this time. Of course we know it has happened every day. We are in competition with these note brokers who are constantly at the offices of our customers, you know, seeking to buy their paper.

Q. Do you ever buy any paper from note brokers?

A. We do. We loan them money on paper. They will buy paper and borrow money on it.

Q. That is the business of a broker, isn't it, to offer a loan at a certain figure?

A. Well, there are more dealers than brokers. They will buy a note at a certain rate of interest and sell it, probably sell at a worse rate. They may sell a note at a loss to themselves.

Q. And they sell it to the banks?

A. Banks and individuals.

Q. Well, isn't it mostly to the banks?

A. Probably the larger proportion would be to the banks because they are the larger reservoirs of credit, but they also sell to individuals.

Q. Then isn't it true that this competition that comes from brokers is a competition of other banks?

A. Not entirely so. Those people are dealers in notes, the same as we are. They will go and borrow money, carry perhaps several million dollars of paper. Now, permit me. He buys or could carry that much, but doesn't always sell it. He may sell it or he may not sell it. They always carry large stocks themselves.

Q. Let us speak more definitely instead of speaking broadly, generally and concretely, of the brokers that you are in competition with here in St. Paul. Is it true that there are any such brokers here in St. Paul in competition with you who carry on their own funds any appreciable portion of the loans that they acquire?

A. Yes.

Q. I understood you to say that during the year 1921 there was fifteen million dollars of such loans to other brokers in St. Paul.

A. There would be more than that amount of paper sold through Minneapolis or note brokers doing business in this district.

Q. I understood you to say, generally, that you put the figures in St. Paul at fifteen million dollars.

A. An amount of paper that was sold through note brokers by St. Paul people.

Q. Is there any note broker doing business in St. Paul who during the year 1921 acquired and held any important part of that fifteen million dollars?

A. Yes. They would have to carry quite a substantial portion of it. Their sales are very large.

Q. What would you say would be the largest amount of money held by note brokers in St. Paul in 1921, with his own funds?

A. These note brokers don't all live in St. Paul. The principal note brokers are in Minneapolis.

Q. I am speaking only of the St. Paul note brokers now.

A. I couldn't tell you that.

Q. Now, going over to Minneapolis, you say they come over and operate here?

A. Yes.

Q. Can you give us a minimum amount or the highest amount—

A. I couldn't tell what they were carrying, no. I know we loaned them money, and I know other banks loaned them money.

Q. You know you loaned the brokers money?

A. Yes.

Q. And in that respect, in so far as they loan money to people at St. Paul, they are making loans for you?

A. No, they are not making loans for us.

Q. They aren't acting for you at the time that they make the loan, but the money which is supplied on that loan comes from your bank to some extent?

A. Yes, but they get a profit out of it that we would otherwise get if they were not in business.

Q. It is a brokerage profit?

A. Yes.

Q. In bringing the people together?

A. No, they buy and sell, as a rule. Very seldom they place paper. They buy and sell on a rate.

Q. But isn't it true that mainly their profit is a brokerage profit, brokerage commission for bringing people together?

A. No, they take the paper, actually take the paper, buy it. It is true, probably, that they don't act as agent in placing paper; they are not agent for the borrower or agent for the bank, but they actually deal in paper as merchandise. They buy and sell the paper.

Q. But usually isn't it true that they buy and sell at the same price?

A. Not necessarily no. If they bought and sold at the same price they wouldn't make any money. They figure it in various ways.

Q. I am speaking of generally—

A. No. I don't think there is any general rule. I think they usually go to a man and offer him so much money for such a time at a certain rate.

Q. Well, isn't it generally true of brokerage people, or people working on that basis, that they endeavor not to speculate; they endeavor to earn the fee for the service they perform and break even on the money transaction?

A. Yes, but competition—the broker's business—that was true a good many years ago, these brokers really acted as brokers, in my early days in the banking business. That was a very good practice. But the competition is so keen today that the jobber or manufacturer selling paper to a broker will make him take the paper and buy it, so that he doesn't let the broker have it as a commission sale; he makes him buy it and pay for it, and then the broker will carry that paper until he can sell it. If the market goes against him he may not be able to sell it. He may have to hold that paper until maturity.

Q. That is very rare, isn't it?

A. No. They don't aim to make bad guesses, but they

make a bad guess as well as anybody else. They always carry a large amount of paper.

Q. In instances in which you have bought paper from brokers, is the rate that you receive smaller or greater than the rate received by the broker, leaving out of consideration the brokerage commission?

A. You mean do we take it at a less rate than the broker?

Q. Yes.

A. Yes, we do.

Q. Less than what he got it for, after deducting his commission?

A. Well, we don't know. We don't know what he paid for it; he might buy and get it for five or four and a half.

Q. Don't you inquire?

A. No, we don't know what rate he got it for.

Q. Does the paper bear any specific rate of interest?

A. No, no rate of interest. It is all discount. A man simply promises to pay on a certain date fifty or \$100,000, whatever the note may be for. It doesn't carry any rate of interest. It is discounted. The practice, in buying paper, is to take out the rate of interest. We can't tell what rate the broker took it for, otherwise it would hurt his sales. He wouldn't want to have it specified that he bought it for five and a half and tried to sell it for 5. He will sell it at a certain rate and the interest will be demanded.

Q. How is it that a broker can loan money to one of your customers and sell that paper to you, after taking off his discount, for—

A. I am very glad to answer that, because you asked two or three witnesses yesterday, and they apparently didn't know. The reason for that is that a broker in selling the paper does not disclose—In the first place, the man that holds it—it may be an individual, it may be a corporation. When he sells that paper he sells it with no agreement to

renew. There is absolutely no responsibility. The man knows when he takes that piece of paper that it will be paid when it is due. He gets it without any obligation on his part. Now, when we loan a customer, why that money goes with a call. We know that we have got to take and renew that man's note if he can't pay it at maturity. The broker when he sells a note—the broker has an advantage over us. When he sells that paper he sells that paper with absolutely no condition to it, it has to be paid when it matures. The man knows when he has a note maturing. It isn't so with a jobbing house, it has to pay that note or fail. While with us, we know that if we loan a local jobber here some money and it isn't convenient for him to pay when it becomes due, we have to renew that note whether we want to or not. In other words, our customers have a call on us for so much money, and that call is—Mr. Sommers, I think it was, testified yesterday that his note broker wanted to know if he had any paper that he bought that he had lines of credit open with the bank so he would be sure to have to pay it when it was due. That is where the competition is very difficult for us. In other words, these people have a call on us for so much money and when we wish to loan them the money they won't take it; when we don't want to loan it, they come in and ask for it.

Q. You could, then, at least theoretically, say to your customers, when you loan them money, "We will loan you the amount of money you ask at this rate of interest; we will loan it to you at a lower rate of interest if you agree positively to pay it when due?"

A. Yes, but that agreement wouldn't be worth anything. We know that agreement wouldn't be worth anything. We wouldn't ask them to live up to their agreement. If it was a local concern, and the time came—like the stress of 1921—when they couldn't borrow money outside, they have got to

come to their local banks. We couldn't ask them to pay that.

Q. *Then the situation there is this, that your customers as depositors occupy a peculiar, special relation which involves something different than the mere loaning of money at a bank upon a contract containing terms which must be lived up to to the letter?*

A. There is no contract there. If we are going to loan money we have to loan it that way. Competition makes that, but we have no contract. It is simply that we know if certain things happen, we will naturally do certain things ourselves.

Q. Your relation is something different?

A. This thing is not discussed with our people, except we find one once in a while selling paper to brokers. When they ask for a line of credit, they don't say they are going to treat us that way, only borrow money from us when they want it, but we know probably that that will be the case.

Q. Then there is something above and beyond the mere abstract proposition of making loans to depositors?

A. There is a personal relationship there that has to be observed, yes. You might call it local pride—look out for your own community.

Q. And by which you look after them?

A. Well, banks are quasi institutions anyway.

Q. These note brokers deal with the situation different than that?

A. Absolutely. The customer in selling that paper knows their ability to loan money is dependent upon their ability to borrow money upon their stock in trade, or upon their ability to sell it. That is the reason, when they deal with these note brokers, that they keep their lines of credit open at the bank. The reason the note broker can offer a lower rate of interest is because, as I said, he offers something that is just like a bill of exchange, no obligation to take it.

A man that has a few thousand dollars to invest—Mr. Gordon testified yesterday that he himself bought commercial paper, you remember,—can put it right in there, and he knows he is under no obligation to renew that note. Therefore they can give a little better rate than we can. They simply, when the market is bad, step right out, and that is all there is to it, and then the jobber will come, and the dealer will come direct to his bank to borrow money.

Q. And the bank generally take advantage of the offers of the note brokers?

A. Well, not necessarily. Of course, if we don't buy of note brokers, if they can loan their own customers, they have to employ their funds. The bank has to loan its money on something or get security primarily. Of course it tries to get as good a rate for its money as it can, naturally tries to loan to its own dealers. Of course we often have millions of dollars of lines of credit of people having calls on us for that amount of money, and no loans. We know that they can come and call on us for that amount of money. We call them up and say, "Won't you please take it?" and they say, "No, we don't want it." We naturally try to loan our money first to people who have a call on us. If a man has a line of credit on us, we try to loan him in bad times and good times. He wants to borrow very small sums of money when times are good, when rates of interest are low, and wishes to borrow very large sums of money when times are bad and it is difficult for the note broker to sell his paper; so that makes the most difficult kind of competition for us. You ask if we buy of note brokers; we do. We loan note brokers on the paper that they buy but we do it because we have to do it not because we want to do it. We have to employ our money on good security and keep our capital employed. The profits in our business are so small that we have to keep every dollar employed all the time that we can

in order to pay our expenses and small returns to our stockholders.

Q. What would happen to the note brokers if the banks refused to buy—

A. Their business would be very much smaller and very much fewer note brokers. Their business would be limited to what they could sell to corporations or institutions outside of banks. I have in mind now, for instance: One corporation, on the last statement, had a million and a half dollars of loans, and another a half million, and another a million. They would sell but of course it would be very much smaller with particular customers. Of course you would never get the banks to agree to anything, they couldn't agree to that, and I suppose it would be in restraint of trade if they did.

Q. It is true, however, that the broker depends upon the banks?

A. To a very large extent, yes.

Q. And their business would be negligible if the banks were not to receive—

A. It is a form of competition we cannot stop. We all wish there weren't any note brokers, but we don't know how we can stop them.

Q. Now, in what way do you at your bank feel the competition of real estate loans?

A. Well, anything that takes money is competitive with us, who are loaners of money. In other words, a man if he can't borrow on a real estate loan, why he would come and borrow at the bank on an endorsement, have to borrow his money some way or put up security of some kind, put up the real estate loan, for that matter, borrow of us on real estate.

Q. Isn't this true, that usually the man who borrows money on real estate, the farmer who borrows on his farm, the city man who borrows on his home, can't borrow other-

wise, or if he can, that he has borrowed beyond the banking credit?

A. No. It is often true. I don't think that is always true, Mr. Ryan. Almost all of these people that borrow money get it from relatives who have savings bank books or money, to endorse for them. They very often get it because they don't like to ask any one. That is the only piece of property they have. They don't want to ask anyone to endorse for them.

Q. That assumes that they induce another individual to do something for them?

A. Yes.

Q. But on their own resources, isn't it generally true, as a broad proposition, that the man who loans on farm or residence, is limited to that form of borrowing?

A. Yes, he is practically limited to that or asking some relative to endorse for him. That is why a man mortgages property. That is quite often practically the only collateral that he has; that is true.

Q. And isn't it true that that kind of borrowing is not the kind of borrowing that you get or want?

A. Well, I wouldn't say we didn't want it. We have often discussed taking a moderate amount. We don't carry for customers any substantial amount of real estate mortgages, but we have a saving bank department and we discuss taking a certain amount of mortgages ourselves for that department.

Q. And it is only in that respect, isn't it, that you can say, in any measure, that there is any dealing in farm mortgages, comes in competition with you in any way that you can feel or appreciate?

A. We can feel it. You ought to be in the banking business to appreciate all this competition. We feel competition on anything wherever money is employed, naturally.

Q. I mean aside from that. We assume that every employment of money is in competition with your bank?

A. Yes.

Q. At least as a theoretical proposition.

A. Well, it is an actual proposition. Our bank and every other bank or every other person that loans money, naturally. A man requires no office, no sign except \$100, or a thousand dollars or ten thousand dollars, to go into competition with the bank. That is the most liquid thing in the world today.

Q. As a practical proposition, do you think if I went out here on the corner of Fourth and Cedar street and stood there and said I wanted to do business with money, that it would be at all likely that anybody would come up and deposit any money with me?

A. They wouldn't deposit any money, but you could loan all the money you would like to.

Q. And if I loaned money, is it at all likely that you down at the First National Bank would know of my loaning money?

A. We might not as to that one individual, but if you carried that out with 5,000 people, from time to time, as they are doing it all the time, we do feel that competition. We feel it would be slight in the one case; in that case we wouldn't notice it naturally,—like one drop of water would not fill a pail, but you keep on dropping the water in, you will soon fill the pail.

Q. That is about relatively the situation, isn't it, that it is a drop compared to a pailful?

A. A drop to an ounce bottle, and I will change my testimony.

Q. In individual loans of that kind, about the only mortgages that you deal in are those which you acquire in your savings department?

A. Well, we can take twenty-five per cent of our capital,

or one-third of our time deposits. That would be in our case—we will say two million dollars would be the limit that we could loan upon mortgages, under the National Bank Act. We could take up two million dollars in mortgages, that would be the limit that we would be allowed to take. But we could take up to substantially that amount; but a third of our time-deposits are, say, six or seven million dollars.

Q. And isn't it a fact that because of the nature of your business that you would not want to loan money on farm mortgages except to the extent possibly of investing some of your savings bank—

A. That is true. The law provides that. We can take one-third of our time deposits. The law recognizes that it would not be good business for national banks to have their entire assets in real estate mortgages, but a substantial percentage, of say one-third of our time deposits, the law allows us to put into real estate mortgages. We haven't that amount. As a matter of fact, I do not think we have practically any mortgages, but that would be what we could do.

Q. As to those mortgages, you loan your funds and take mortgages as securities, you don't buy and sell mortgages.

A. No, we do not. I think we have occasionally done that, but not to any great extent.

Q. That is not your practice?

A. Well, that is not a large part of our business. We have the right to do that.

Q. Your aim is to secure interest from these deposits, and that means permanency?

A. Our aim is to make all the money we can legitimately without taking any risk.

Q. If you could make a little money in buying and selling mortgages, do you think you would do it?

A. We would do it.

Q. Would you violate the law in doing it?

A. No.

Q. Does the law permit you to deal in mortgages?

A. Certainly. We can buy mortgages and sell a mortgage if we take it.

Q. You could sell the mortgage if occasion arose in your business, but you couldn't indiscriminately buy and sell mortgages, could you?

A. I don't know why not. If we can buy, we could sell, I should think. We can buy and sell securities. We do it right along.

Q. You can buy and sell national bonds. Can you sell other bonds?

A. We do, yes, certainly; why not? We are authorized to invest our—to change the investment, sell one bond and buy another.

Q. Don't you appreciate the difference between what you say is the fact, what I asked about? You say you can invest your funds and you can change your investments, but your objective is keeping your money invested, not in making money in the difference between the buying and selling price of what you invest your funds in. You don't recognize that distinction?

A. No, I do not. I think if I bought a mortgage at eight per cent or six per cent and had an opportunity to take another at eight, that the law would allow me to sell the six per cent and put it in an eight per cent or another one that I could get a better rate of interest on. That is the practice; I think all of the country banks do that. They buy a mortgage on a farm at one rate and sell it to somebody else at another rate. The bank is doing it all the time, both national and state banks.

Q. That is what I mean in dealing in mortgages.

A. Yes.

Q. And it is your impression that the law permits that?

A. I think so.

Q. As a matter of fact, your bank does not engage in dealing in mortgages of that sort?

A. No.

Q. You loan money on real estate security in order that you may place your—

A. I am telling you what we are allowed to do. We do not, as a matter of fact, invest at all in real estate securities.

Q. You get some real estate mortgages. You did have in May, 1921, and you did have in May, 1922.

A. If we did have, it was a very small amount.

Q. If you did have, how did you acquire them, do you know?

A. I couldn't say.

Q. You don't know whether or not you bought them from farm mortgage companies?

A. No, our dealings consist chiefly in loaning to our country correspondents on the mortgages themselves, not in buying the actual mortgage.

Q. That is, you mean that the mortgage is collateral?

A. Collateral.

Q. But those are not mortgages that appear in your statement as mortgages owned by you?

A. No.

Q. When the mortgage comes to you as collateral to secure a note given by a country correspondent, you don't list those mortgages as mortgages held and owned by the bank?

A. No.

Q. I am speaking of those mortgages which in your statement of resources here—can you tell us how you get those mortgages, whether your bank directly loaned money to the farmer and took his mortgage, or whether you, having funds on hand, went to the farm mortgage loan company and bought a mortgage?

A. No, we do not loan on mortgages. We do not do any business with the farmer directly.

Q. Such business as you do in putting out your money on mortgages is done with other banks or with farm mortgage companies as collateral?

A. By loaning on the mortgage as collateral.

Q. That only applies to a certain part of your business, the mortgages which you come into the ownership of.

A. We might possibly have in our loans; that would be very small. Some loans were secured by mortgage; that would be very small. It would appear under our loans, if any.

Q. Now, you say that you occasionally bid for bonds. In 1921 was that true?

A. I couldn't remember whether we did those years or not. It would be very rarely that we would bid—

Q. You wouldn't say that it was an appreciable part of the activities of the bank as a whole?

A. No. If we thought we could get some bonds and make some money, we would bid. Competition is so keen in that line our efforts, without a bonds sales force would be comparatively limited.

Q. Do you know whether that situation, in respect to your bank, is true of other national banks?

A. I do not think that is always true with other national banks. Some of them do run a bonding department and make a regular effort to sell the bonds to customers. We do that in a very limited way.

Q. They buy bonds with a view of selling them at a profit?

A. Well, we all do. If we couldn't sell at a profit we wouldn't buy them. If we didn't think we could sell them at a profit we wouldn't buy them.

Q. Insofar as your statement as introduced here indicates ownership of bonds,—take government bonds on

May 1, 1921, you held government bonds, in round figures, three and a half million. Were these bonds held by you with a view to sale? |x

A. Yes, we held them, I think, about three and a half million. In 1922 we had eleven or twelve million, I think. We later went up. I think we held at one time over twenty million dollars of government bonds and securities. Today we hold a little over nine million dollars. We employ our money that way and sell them if we think the market is—

Q. Is that the primary purpose of it?

A. The primary purpose is to make money.

Q. I mean make money by selling at a profit?

A. Make money by selling at a profit and getting our interest,—two things.

Q. You don't discriminate between those—

A. We have to take those two things into consideration, because we couldn't hold for interest if we thought the market was going to go down. That would result in a loss; that would wipe out any profit we might have. We have to take both into consideration.

Q. You only mentioned government bonds. There were other bonds which you held in those years as well to a lesser extent?

A. What was that in 1921—about a million and a half, something like that?

Q. Other bonds, stocks and securities, \$1,428,272.84.

A. What was it in 1922?

Q. \$2,710,730.03.

A. That subsequently changed. If we get a profit we sell them off; we get the money. There are various reasons why we do that.

Q. What stocks were included in those items?

A. I can't think of any stocks now. That is probably just the title. We are not allowed to hold stocks except we take for debt. I can't remember any stock that we have.

If we had anything it might be something we took for debt. I think that applies to the title the government gives to that account.

Q. That would be as true of other national banks as it would be of your bank?

A. They can take a stock for debt or hold stock in a Federal Reserve Bank. We are not authorized to invest in stocks except to take it for a pre-existing debt.

Q. But stocks of any kind, so far as national banks are concerned, are a negligible item in their resources always?

A. Yes. In other words, we can only take it for debt, and, of course, the government will see that they get rid of that stock as soon as they can sell it without sacrifice.

Q. "Other bonds and securities." What type of bonds and securities were those in 1921 and 1922?

A. Well, there would be generally railroad bonds, listed bonds.

Q. Listed bonds?

A. Well, yes. A large proportion would be generally railroad bonds, listed on some exchange where it had an active market.

Q. And usually on what exchange?

A. Usually New York Stock Exchange.

Q. Is it true that you endeavor not to possess bonds or securities that are not listed on any exchange?

A. Well, the desirability of a listed bond is the fact that as a bank we may have our customers call upon us for money, if we have a bond that is actually dealt in, we have something we can readily convert into cash. Speaking of those customers that borrow money of us and get their money from notebrokers, in a case of necessity, we can sell that kind of a bond when we couldn't sell a bond perhaps with a large return.

Q. Is it usually an endeavor to have your funds, so far as they are invested in bonds, invested in listed bonds?

A. In something that we readily convert. That is the purpose of United States government bonds,—one purpose. First, they are secure, and that is something we can readily convert into cash if our customers need the money, and that applies, in a degree, to the other bonds, bonds of a character we can convert into cash.

Q. As to those bonds, government bonds and bonds of the other kind which you have described—listed bonds—the price of those bonds is usually fixed elsewhere than in Minnesota, is it not?

A. Fixed wherever money is, yes, fixed in the price of money. The price of a bond is fixed by two things: first, the security of the bond, which we will assume is a proper security, then the point of all things is fixed by the demand for money. That is one thing. A stock is governed by speculative possibility. A bond has no speculative possibilities except on a narrow margin. The price of a bond is governed entirely, first, security, and, second, by the money market. In other words, in times of stress, the same bond or the same security would not sell for as high a price as it would in times of easy money, when people are seeking employment for their spare money.

Q. Isn't it true that the price at which you must buy, and the price at which you must sell your government bonds is fixed by the New York stock market price?

A. Yes, it is, but we go further than that; it is fixed by the demand for money, by the available supply of money. The price on the Stock Exchange is only a barometer indicative of what that demand is.

Q. That is where the register is?

A. That is where the register is, but it is really fixed all over the country by every little man that is dealing in government bonds, buying or selling.

Q. In respect of government bonds, at least, the whole country is one fluid market—

A. Yes.

Q. —and the level is not affected by what may occur in Minnesota or in Texas?

A. It is what may occur over the country. What may occur in Minnesota might affect other points.

Q. Appreciably? Well, to illustrate: If I stand out on the corner and loan money to people, the price of government bonds isn't going to go down, is it? The price of government bonds are not appreciably affected by loans that people in Ramsey county or Minnesota may make on real estate, or in any other way?

A. I wouldn't say that. Of course, the price of any bond is affected by the demand for money—supply of money.

Q. Appreciably affected?

A. It depends upon the amount. If it was simply a \$5,000 mortgage on a piece of property, I don't suppose that would affect the price of government bonds, but if you mortgaged the farms in the state of Minnesota for 200 million dollars, it certainly would affect them.

Q. About how much would the price of government bonds go up or down, say, under those circumstances?

A. Well, it entirely depends on whether I make a profit. I couldn't tell you.

Q. You wouldn't say that any price change would follow?

A. I would say that price change would follow, under the circumstances, if you took 200 million dollars out of the country, I should say it would. You could take the government in its issues of treasury certificates, they have this effect on the price. Let the government put out 200 million dollars worth of securities, you would see the price in securities affected by it.

Q. About how much?

A. I couldn't tell you how much. Talk about even such an intangible thing as a Soldiers' bonus, talk about the

government issuing securities for that, affects the price of government bonds. So when you ask me what affects the price of government bonds, it is pretty difficult to say what would or what wouldn't.

Q. The national banks as to competition are affected as such, if not more, by mere talk of purported Acts of Congress than they are about any moneys or credits in the hands of the Minnesota individual citizen; that would be true, would it not?

A. I don't think so.

Q. Each one affects the situation, doesn't it? One is just as vague and intangible as the other, isn't it?

A. No, sir, it isn't, not in my opinion.

Q. You said that the mere discussion of a Soldiers' bonus might affect the price of government bonds?

A. I didn't say it would affect the price of government bonds; it would affect the competition of banks. That is two different propositions.

Q. Then you do not say that what affects the price of government securities—Does that necessarily come in competition with the bank?

A. It might affect our profit if we had large amounts of government securities.

Q. But you don't consider that mere fact competition?

A. No. The fact that government securities went down, because it made them go up or down, might be competition and it might not.

Q. The mere fact that bonds go up or down, from one cause or another, doesn't indicate competition with national banks?

A. It might or might not, depending upon the reason for them going up or down.

Q. Do you consider that these investment houses in selling the bonds of public service corporations come in competition with national banks?

A. Come in competition in a broad way, that they take money that otherwise would be loaned by us.

Q. Only in that broad way?

A. Well, we buy public service bonds; national banks buy public service bonds; if they sell to somebody else, why they are in competition.

Q. That would be true of railroad bonds, investment houses dealing in any way by buying or selling railroad bonds, would, in a broad way, come in competition with national banks?

A. Yes.

Q. Insurance companies, in loaning large amounts of money on real estate security, come in competition with national banks in the same broad way?

A. In a broad way.

Q. When you speak of the individual who is loaning money, he, too, comes in competition with the national banks in this same broad way that you speak of?

A. Sometimes in a broad way, sometimes in a very direct way. The instance that I quoted, where we had eleven houses that we naturally would loan to, those eleven houses were borrowing substantially a million and a half dollars from individuals instead of the banks. That is a case where it comes in in a very direct way. It might be a broad way or a direct way, a very direct way.

Q. Well, take your customer, depositor, who has borrowed money from his employe, what does he do with it?

A. I didn't get that question.

Q. What does your depositor who borrows money from his employes do with it?

A. We don't go so far as to ask a man what he does with the money that he borrows.

Q. Doesn't he deposit it in your bank?

A. He wouldn't deposit it for any length of time, because otherwise he wouldn't borrow it. He may deposit it

for a few minutes while he paid his bills. If a man borrows money he borrows for some definite thing. He doesn't borrow to deposit in the bank. If he borrowed \$5,000 he might put the check in the bank and draw that five thousand in \$1,000 checks, or whatever they were, to disburse it.

Q. That is what I am getting at.

A. In that case the bank might even then be at a loss. He might deposit the check on California or San Francisco and it takes us a week or ten days to collect it and his checks come in before that, collect the check that he deposited.

Q. That has come to this point, that when a man loans money to another, that money doesn't go out of existence, does it?

A. No, he loans credit, he doesn't really loan money; he really doesn't actually take the money. That man perhaps as an individual has credit at the bank. He loans this man \$5,000 and he gives him a check on his credit, and the man has a credit; he takes the check to some bank somewhere and he has a credit and he disburses it in turn. We very seldom loan the actual money; we call it money.

Q. If you delivered him the actual money, the money would remain in existence?

A. The money would remain in existence.

Q. And the person who procured it would pay it out to others, would he not?

A. Probably.

Q. And those other people would have the same opportunity to get their deposits, as you had the opportunity to get the original deposit, would they not?

A. It would depend upon where they were located. If they were located outside of the city we wouldn't. That locally would be true, this bank or some other bank would.

Q. That is the situation. So that when you say that you are deprived of the money for deposit by these transactions,

it means that you are looking only to your own bank and not to other banks with any of these transactions?

A. No, I wouldn't say that. We have, in order to conduct our business, to maintain an office. We pay taxes, we pay rent, or whatever it might be; we pay clerk hire; we have to maintain an organization. In competition with us the individual maintains no organization. He can loan money very much cheaper than we can. Any man who loans money reduces the opportunity that we have to loan money.

Recess for ten minutes.

Q. Mr. Brown, going through this list of money and credits, the first item, "Money subject to check and on deposit in banks, trust companies, or similar financial institution", that item, in the hands of individuals, does that come in competition with national banks in any way?

A. Will you please read that item again? That certainly wouldn't come in competition with the national bank. No.

Q. Take the second item, "Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments," that item come in competition with national banks?

A. The deposits in postal savings banks, or trust companies, or savings banks would be, in a measure, competitive with the national banks.

Q. Take the item 3, "money, other than above specified on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere"; that come in competition with the national bank?

A. I don't know what that item is.

Q. Money on hand and not on deposit in the bank; we will assume it is.

A. Well, if the loan is on hand, it is not in competition. If he loaned it, it would be.

Q. As it stands, it is not in competition?

A. It is not in competition, but it might be in competition.

Q. Item 4. "Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness."

A. That would be in competition with national banks.

Q. Without any qualifications?

A. Yes. Cream checks wouldn't be. Mr. Young testified that the amount was negligible.

Q. How about promissory notes?

A. Promissory notes would be in competition with national banks.

Q. Regardless of what kind of notes they were?

A. Yes.

Q. If I performed services for a client of mine, instead of giving me money he paid me a promissory note, would that be in competition?

A. Yes, because he might borrow that money at the bank and pay you. He is really borrowing of you, whatever the transaction may be. He is borrowing the money from you instead of at the bank.

Q. That is the sense in which you say that the promissory notes—

A. In other words, he owes you a certain amount of money due today, we will say; instead of paying you today he gives you his note. In other words, instead of going to the bank and paying you, he borrows money of you for that period. That is the result of that.

Q. And that, you say, promissory notes are in competition with banks always because they represent the postponed payment of something that is due?

A. Yes, sir. In other words, the payment is due and the man has to make a contract with you to borrow the money from you or borrow from somebody else.

Q. That implies his ability to borrow money at the bank?

A. If he had credit enough to borrow from you, the presumption is he would have enough to borrow from the bank. If you felt well enough to loan him the money you would endorse his note at the bank, which would make it absolutely good, Mr. Ryan.

Q. Then you would put no restriction on that item?

A. No. As I said before, that we are in the business of loaning money. Anyone else who loans money is in competition with us,—can't help being so. If you are selling apples and somebody else sells apples, it doesn't make any difference whether you sell them in a store or an apple car, the other man is selling apples in competition with you. That is the principle that applies. You are selling in competition with the other man. Money and credits are very simple, merely commodities. You can tell where it is and where it goes.

Q. Supposing this man that owed me a thousand dollars had a thousand dollars on deposit in the First National Bank; instead of paying me he gives me his note. Supposing instead of paying me that thousand dollars that he has on deposit in the First National Bank he gave me a note for a thousand dollars?

A. That would indicate that he wanted that thousand dollars for some other purpose. He could just as well borrow it that way and keep his thousand dollars on deposit as he could to borrow from you. He certainly wouldn't borrow from you if he didn't want that thousand dollars for some other purpose. At least I can't conceive it, if he was in his right mind. We don't often have people borrow money who keep a balance on hand. They usually borrow money when they need the money.

Q. Take the item 5, "Bonds." We have covered that, I believe.

A. The same answer would apply there.

Q. And 6, "Mortgages", we have covered that?

A. Yes.

Q. And 7, Mortgages, we have covered that. 8. "Chattel mortgages," and you recall the testimony of the Assessor in that respect, that that item 8, "Chattel mortgages upon personal property in this state or elsewhere", was almost entirely mortgages upon furniture sold by dealers?

A. Yes. I don't know how much of those chattel mortgages are on cattle. Of course we loan very largely on mortgages on cattle. The Cattle Loan Companies are very strongly in competition with us in that way.

Q. But assuming the Assessor's testimony to be correct on that, those chattel mortgages, as indicated here—

A. I think such of those chattel mortgages as are on furniture compete with us only in a broad way. We do not directly take chattel mortgages on furniture, but of course in the sense that they use money, borrow money, that is competition.

Q. Only in that broad sense?

A. Only in that broad sense. We do not take chattel mortgages upon furniture. We do take chattel mortgages upon cattle.

Q. "9. Judgments", of course there would be no competition. Item 10. "Book accounts." Do you consider that money and credits represented by book accounts are in competition with the national banks?

A. Well, it would depend upon how long the book account was allowed to run. The book account might become a loan; it might be carried in that way that it would be competitive with national banks or with anyone who loaned money. In other words, a man might buy goods of another man and the amount would be due in ten days, he would make an arrangement with that man to carry him for six months or three months, or thirty days, in that way it would be a loan and be competitive with anyone who loaned money.

Q. And that would apply to every jobber who sold goods who allowed the book account to run?

A. On long time, yes.

Q. That jobber by so doing comes in competition with the bank?

A. Where he loaned it on long time, because it is practically loaning money. In other words, if he didn't do that his customer would have to go to the bank and borrow money, he would have to go to the other reservoir of credit. The jobber whom he buys goods of, if that reservoir was not open, he would go to some other reservoir, he would mortgage his house or he would go to his bank and borrow the money of his bank instead of getting credit on his accounts. We often have accounts and statements presented to us where a man will borrow comparatively a small sum of his banks but will carry his indebtedness with the people from whom he buys goods, not taking his discount, or have some arrangement where they extend him a credit.

Q. Isn't it true, Mr. Brown, that in some measure, the fact that the jobbers have these book accounts outstanding and unpaid, that because of that fact they are required to come to you and borrow money?

A. Well, the jobbers often will set a man up in business and give him a stock of merchandise, let him pay interest on it, charge him six or eight per cent, whatever it may be. The jobbing house, if a man wants to start in business in some town, will stock him with merchandise and just charge him interest on the amount. In other words, they are loaning him capital. In that way they come in competition with the banks.

Q. When they loan money in that way, they come to you and borrow it, do they not?

A. They get that money. They might loan their own money. They might not be borrowing money at that time, they might loan their own capital. It would be hard to dis-

tinguish what particular money went into that particular investment.

Q. It is not possible, then, to say that book accounts as such represent credits in competition with the bank?

A. It is possible to say that book accounts may represent a large sum in competition with banks. The case I speak of, where a man in business, instead of borrowing of his bank, will carry book accounts. He will get some man he is buying of, that he has dealt with for years, and get his capital that way.

Q. "11. Contracts for the sale of real estate outside of this state."

A. Well, except in a broad way, where they use money, we wouldn't be in competition.

Q. Contracts for the sale of real estate in the state. Of course that would come the same as mortgages, I presume?

A. That would be in competition.

Q. "13. Annuities, royalties, and all sums of money receivable at stated periods."

A. That wouldn't be in competition.

Q. 14. Is a catch-all provision, it might mean anything.

"15. Shares of stock in corporations the property of which is not assessed or taxed in this state."

A. That might depend upon the business in which those corporations were engaged. It might or might not be something in competition with us. In other words, if this trust company were an investment house, or bank or trust company, it might be in competition. If it was a railroad company, it would not be.

Q. How about an insurance company?

A. Yes, so far as the loaning of money, the insurance company loaning money, it would be in competition with us.

Q. How about the public service corporation which is borrowing money and issuing bonds?

A. That wouldn't be in competition with us. That would provide a possible customer for us.

Q. When you speak of competition in a broad way, you mean by that the general proposition that every use of money competes with every other use of money?

A. Not every use of money but everyone who loans money. Our particular function is to loan money. A man might use money in ways that was not in competition with us, but if he loaned money, no matter how small money, it would be in a small way competitive with us. But a man might use money to dig an oil well or build a house or do something of that kind, no stretch of the imagination could make that in competition with us, but if he loaned that money to anybody else, it would be in competition with us.

Q. Supposing he withdrew his deposit in your bank, wouldn't he be in competition with the bank?

A. That wouldn't be in competition with us. He would simply take away from us, but if he withdrew that money and loaned it, then he would be in competition with us.

RE-DIRECT EXAMINATION

By Mr. O'Brien:

Q. You were asked about insurance companies. Do you know whether or not it is the practice of all life insurance companies to loan the policy holders money up to the cash surrender value of the policy?

A. They do loan the policy holder, yes.

Q. Is it the practice to make loan securities by the assignment of the life insurance policy up to the cash surrender value?

A. I think those loans are made, yes, sir.

Defendant rests.

E. L. THORNTON.

sworn on behalf of plaintiff, in rebuttal, testified:

By Mr. Ryan:

Q. Mr. Thornton, what is your business?

A. I work in the bank.

Q. With what bank are you now connected?

A. Central Metropolitan Bank.

Q. That is a state bank, is it not?

A. Yes.

Q. And it is the largest state bank in Ramsey county?

A. I believe so.

Q. And you are President of that bank?

A. Yes.

Q. How long have you been President of the bank?

A. About six months.

Q. And prior to that time how long were you connected with it?

A. Since the bank was organized, about six years ago.

Q. And in what capacities were you connected with it prior to your appointment as President?

A. I was either vice-president or chairman of the board of directors.

Q. Were you connected with any other bank prior to that time?

A. I have been connected with the First National Bank at Benson, but not actively.

Q. And what was your connection with that?

A. Vice-president.

Q. And for how long were you vice-president?

A. Oh, twenty years I guess.

Q. You are, by reason of the experience which you have recited, familiar with banking conditions in St. Paul and Ramsey county, are you not, Mr. Thornton?

A. Yes.

Q. I am going to read to you from the classification of money and credits as they are taxed in this county, and ask you in respect to each of them, whether or not, in your judgment, those items in any appreciable or material way come in competition with the business carried on by the national banks of this county, or of the state, and whether or not they come in competition with the investments of shareholders of national banks in this county and state; for instance, item 4, "Promissory notes, bills of exchange, due bills,"—that term "cream checks" is so insignificant that I do not inquire about—Do you know of any way in which those items can be said to appreciably come in competition with the national banks of this city or county?

A. There would be some competition.

Q. Held by individuals?

A. There would be some competition, but my impression is that it would be small.

Q. Item 5, "Bonds, other than United States bonds, State and Municipal bonds." Can you indicate how those bonds in the hands of individuals in this county and state in any way compete with the business of national banks or the investment of shareholders?

A. I think the competition on that classification would be very small, if any.

Q. Item 6. "Real estate mortgages upon lands situate outside of this state."

A. No, I do not believe that would be any competition.

Q. "7. Real estate mortgages on lands in this state which have not been recorded."

A. I think that would be very small. I think most all real estate mortgages are recorded that banks would have anything to do with.

Q. "Item 8, Chattel mortgages upon personal property in this state or elsewhere." Can you point out any way in which chattel mortgages—

A. There would be some competition in that classification, but I also think that would be very small.

Q. Assuming, as the Assessor has testified, that that item as listed in this county represents almost entirely chattel mortgages given by purchasers to household furniture as security for the payment of the purchase price, would you be able to perceive any competition in such a group of chattel mortgages?

A. No. If that is true, I think that the competition would be almost nothing in that classification because they are not loans that a bank could make anyhow.

Q. "9. Judgments." That, of course, does not permit you to say anything about. Take the item 10, "Book accounts." In your judgment, can it be said that book accounts held by corporations or individuals—that means amounts indicated going to individuals and corporations on articles sold, and the like; can you perceive how that item could in any way come in competition with national banks?

A. Well, I think Mr. Brown's statement is correct on that, that if they were carried for long periods of time, upon that understanding it might be in competition with national banks in a small way.

Q. And that would simply be where the account was carried for a long time, and the person who was indebted was one living in this state and who had been credited and could use it if he wanted to in payment of his account?

A. Well, I think if he had book accounts that were standing for long periods of time, that he probably wouldn't be able to borrow money at the bank to pay them anyhow.

Q. Item 11, "Contracts for the sale of real estate outside of this state." That has been passed. Item 12. "Contracts for sale of real estate in this state which have not been recorded."

A. I do not think that would be any competition.

Q. Item 13 we may pass, and 14. "15. Shares of stock in corporations the property of which is not assessed or taxed in this state." Interpreting that as shares of stock in foreign corporations, corporations outside of those organized in the State of Minnesota, can you perceive any way in which that item in the hands of an individual or corporation in this city or county could come in competition with national banks?

A. Certainly not national banks in this state.

Q. What generally is the distinguishable feature of the loans made by banks, either state or national?

A. Well, they are nearly always secured loans or else loans to business concerns that file statements that are acceptable, commercial loans.

Q. Isn't it also true that a major characteristic of bank loans, is that they are short-time loans?

A. Yes.

Q. Usually what?

A. Ninety days.

Q. Ninety days limit?

A. That is generally the outside limit, yes.

Q. Isn't it true, as a general proposition, that the only loans coming in appreciable competition with banks is loans of that character?

A. Well, I do not know any way of telling how many loans are made between individuals, but from the loans that we see in our bank, I do not think that there are many loans made between individuals that would be in competition with the banking business.

Q. From your experience you are able to say, aren't you, that as a rule people do not borrow money from individuals, one individual does not in any appreciable measure, considering the amount of money loaned by banks, borrow money from another individual?

A. I think that is very small.

CROSS-EXAMINATION

By Mr. O'Brien:

Q. Mr. Thornton, how long have you been engaged in the banking business?

A. Six years.

Q. Before you were connected with the Central Metropolitan Bank of this city were you not in the banking business in the western part of the state?

A. No, I was one of the officers of the bank, but I was not active in it.

Q. You belonged to a banking family, then?

A. Yes.

Q. And you were one of the officers of the bank?

A. Yes.

Q. Now, a bank is an institution—we use that term—a bank is an institution dealing in money, is it not?

A. Yes.

Q. And the individuals organizing the bank contribute a portion of their money which makes up the capital of the bank?

A. Yes.

Q. That money in the purchase of the shares of stock gives that bank its capital?

A. Yes.

Q. And different from a corporation organized to manufacture or to buy and sell real estate or buy and sell dry-goods or groceries, this institution is devoted to dealing in money?

A. Yes, money and credits.

Q. Money and credits. And therefore it is necessarily in competition with every other individual or corporation or firm also dealing in money?

A. Well, if they are dealing in the class of money and credits that the bank deals in, then they are in competition.

Q. They are in competition with every other firm, individual or corporation also dealing in money, loaning money *for a return*?

A. No, not unless they are dealing in the same class of loans that the banks are dealing in.

Q. Unless they are dealing in the same class?

A. Yes.

Q. Does it make very much difference whether they are dealing in exactly the same class or not?

A. Yes, I think it does make a difference.

Q. Let us imagine a community in which there is a million dollars. If \$900,000 of that amount is used for the purchase of bonds, it reduces the amount of available funds for loaning upon promissory notes, does it not?

A. You say if \$900,000 is used for a bond?

Q. Used for the purchase of municipal bonds, let us say?

A. Yes.

Q. It reduces the available funds for loaning upon commercial paper?

A. Well, if that money goes out to the community it does.

Q. Whether it goes out of the community or not, there is a million dollars in a community which is available for investment in interest-bearing securities. \$900,000 of that is absorbed in municipal bonds. There remains in that community only \$100,000 for investment in interest-bearing securities; is that right?

A. Yes, that statement is correct.

Q. It is not the investment of the \$900,000 competitive by reducing the amount of available money for interest-bearing investments?

A. I don't believe it is.

Q. You don't think it is?

A. No.

Q. You think it is only the money that is loaned on banking paper that meets competition?

A. If you go on the assumption that the \$900,000 goes out of existence when it is invested in bonds, why of course it does reduce the amount that is available for interest-bearing securities.

Q. But it does go out of existence as money available for interest-bearing securities, does it not? It is spent in paying labor.

A. Yes, but that money—

Q. It is spent in paying labor, it is spent in buying supplies.

A. Yes, but the money is earned by people who are furnishing those supplies and the money is all in existence just the same.

Q. But you think the money is still available for interest-bearing securities?

A. Yes, but possibly by different people.

Q. You think that if the city of St. Paul issued its bonds for \$100,000 and used that money in buying sewer-pipe and paying labor, that that same money is still ready to be loaned in St. Paul?

A. If it was spent here in St. Paul it would be.

Q. Doesn't it necessarily go into other business, into manufacturing, into dry goods, and into real estate, and into groceries?

A. Yes.

Q. And automobiles?

A. Yes, certainly. It is kept in circulation, but don't become destroyed.

Q. It at once goes into some other form of investment, does it not?

A. Yes, but it is all represented by the same amount of money at the end. It is all represented by the same amount of money and it is still available for further investment.

Q. If it all remains in the same community?

A. Yes.

Q. And so it is still competitive money?

A. Yes.

Q. And it remains in competition?

A. Well, to the same extent that it ever was in competition.

Q. But as long as it remains money and as long as it is available for investment in interest-bearing securities, it is competitive, is it not?

A. You say as long as it remains available for that?

Q. Yes.

A. No, not until it actually is invested.

Q. Eliminating your own dealings in mortgages, is not the money in your bank in competition with the money that is loaned upon mortgage securities?

A. Well, I think that the money loaned by banks on real estate mortgages is very small.

Q. I want you to leave that out of it. Assuming that there was no money loaned by banks upon real estate mortgages, would not the money loaned upon real estate mortgages, still be competing with the banks?

A. No, I do not agree with you on that.

Q. Would you be able to loan money at the banking rates to the same extent that you do now if money could be borrowed on mortgage securities for two per cent in this town?

A. I do not believe that you could get the same rate if you could borrow money on real estate mortgages at two per cent.

Q. Then that competition would force down that rate, would it not?

A. Yes, and it would also reduce the rate that we would have to pay for money.

Q. What do you mean by that?

A. It would reduce the rate of the savings bank account,

the interest that the bank would have to pay, or any other money that we pay interest on.

Q. Is it or is it not a fact that the non-taxable securities which are now upon the market available for investment affect the rate of interest?

A. On bank loans?

Q. On bank loans.

A. No, I don't believe it does. It hasn't been so in the last two or three years. At the time when the greatest amount of bonds that have ever been put out in this country, the bank rates have been the highest.

Q. What is that?

A. At the time when the greatest amount of bonds that have ever been put out in this country, the interest rate in the banks has been the highest.

Q. What was the value of the bonds?

A. The value of them?

Q. Yes.

A. I don't know about that.

Q. Weren't they below par at that time?

A. No.

Q. Weren't the liberty bonds below par at the time that you speak of?

A. I am speaking more particularly about—say three years ago.

Q. That was at the time they were at par.

A. When the interest rate was the highest it has been for several years.

Q. So you don't think that the money which is used for the purchase of bonds, United States bonds, or municipal bonds, tax-exempt bonds, comes in competition with the money that is invested in the banks here?

A. No, I don't think so.

Q. Now, let us assume that you were approached by a man who has 100 thousand dollars to invest, who tells you

that he has an opportunity of investing that money in bank shares; he has also the opportunity of investing that money in real estate mortgages at a certain rate of interest, and he has also the opportunity of investing that money in tax-exempt bonds bearing a certain rate of interest; these offer securities up to the amount of 100 thousand dollars for each of those; are those offers competitive?

A. You mean to the bank itself?

Q. No, to the individual, the man who has the \$100,000 to invest.

A. Yes, but do you mean that it comes into competition with the bank itself?

Q. No, I am talking in competition with each other.

A. Yes, I think it would.

Q. You do think they are competitive?

A. Yes.

Q. And his capital invested in either one of those classes of property would be in competition with the other, would it not?

A. I don't see how it would be in competition with the capital of a bank that is already established and has its capital paid in. The fact that a man wants to buy \$100,000 worth of bank stock couldn't affect the bank itself, because it has already got its capital paid in. It might affect the shareholders who are holding that bank stock in getting a larger profit for them on the sale of their stock, but I don't see how it could affect the bank itself.

Q. Do you understand that we are assuming a tax upon the bank or a tax upon the share?

A. A share of the tax.

Q. You say that if a man was to use his monied capital in making an investment and he had these three classes before him, they would be competitive?

A. What two classes did you mean?

Q. Well, I gave you the three classes. A man came to

you for advice as to an investment of \$100,000; he had an opportunity of buying bank shares, he had an opportunity of buying tax-exempt bonds, he had an opportunity of investing his money in real estate mortgages. Now, would those three classes be in competition with each other?

A. Yes, I think they would.

Q. Now, when you spoke about the various items in the list of money and credits, in the case of bonds, I think, and mortgages, you said the competition was very slight,—did you?

A. Yes.

Q. Were you referring to the amount sold of those investments or were you referring to the character of the investment itself?

A. Well, I was referring to the character of the investment and also to the fact that banks didn't handle a large amount of those investments.

Q. Wouldn't the question as to whether their competition was slight or serious depend upon the amount found in those investments?

A. It would depend upon the amount that the banks handled.

Q. It would depend upon the amount the banks were handling and upon the amount in the item of money and credits returned which you have been referring to?

A. No, I think it would depend almost entirely upon the amount that the banks would handle of that class of investment.

Q. Well, then, you are not speaking of the character of the competition, you are speaking of the amount of the competition, are you not?

A. Well, the amount depends upon the character. The amount of a real estate mortgage that a bank handles depends upon the character of that kind of an investment.

Q. Then you are speaking upon the character of the investment?

A. Yes.

Q. And you think it is very slight?

A. For the amount.

Q. Take up the question of mortgages. You think the competition for mortgages is very slight because of the small dealings of national banks in that security?

A. Yes.

Q. Now, if you ascertained that the aggregate capital of the national banks operating in Minnesota was 37 million, and that the aggregate holdings of the national banks in the state of Minnesota was 25 million mortgages, would you still say that their investments were so slight in that character of securities that the competition was insignificant?

A. No, I wouldn't say it was insignificant. I say that I think it would have a small effect upon the earnings of the bank.

Q. Small effect upon the earnings of the bank. The competition would be slight?

A. Yes.

Q. Would you not consider that a substantial investment by the banks in mortgages?

A. Well, I didn't know that the figures were as large as that. I didn't suppose that they were over twenty-five per cent of the capital of the bank, but even if they are as large an amount as you say, I don't think that they compare to a very great extent with the total amount of their loans.

Q. It is your testimony, with reference to the extent, that competition is based altogether upon your understanding of the amount of money invested in these different classes of securities by banks and by others and not upon the character of the securities themselves?

A. Yes, that is true.

Q. And in looking at the amount in this tabulation, you

have taken the amounts returned in Ramsey county as money and credits?

A. You said I have taken the amount?

Q. Yes.

A. No, I didn't notice the amount.

Q. You didn't notice the amount?

A. No.

Q. But didn't you just say that it was because of the amount that you thought competition was slight?

A. Well, on mortgages I did, yes.

Q. Well, on each of those items doesn't the same principle apply?

A. No, I don't think it does.

Q. Then, on the question of promissory notes, the amount wouldn't make any difference?

A. You mean that the about of promissory notes that have been returned by the tax assessor would be the controlling effect on National Banks?

Q. I understood you to testify that the competition in these different forms of investment, the competition of money outside of banks, invested in these different securities would be slight because of the small amount of investment.

A. Well, I say that as to real estate mortgages.

Q. Well, isn't that true of each one?

A. No, I wouldn't say that that was true of the other ones.

Q. You think that the same principle wouldn't apply to promissory notes?

A. No, not altogether.

Q. Or to book accounts?

A. No.

Q. Or to bonds?

A. No.

Q. Why?

A. Because I don't think it would make any difference how much of book accounts were returned to the assessor, I don't think that would make any difference to a bank in making its loans.

Q. A book account is a credit, is it not?

A. Yes.

Q. Did you not say that you agreed with Mr. Brown's testimony in that respect as to book accounts might come into competition?

A. Might be some competition.

Q. Wouldn't the amount have an effect upon that?

A. No.

Q. The amount wouldn't have any effect. How about promissory notes?

A. I don't think promissory notes would have much effect, because I don't think that they are notes that banks would use anyhow.

Q. Do you know anything about that?

A. Only from the notes that we see in our business.

Q. The notes that you see in your business?

A. Yes.

Q. Well, do you say the promissory notes that are included in this item No. 4 of money and credits—

A. No, I don't.

Q. You don't know what the character of those promissory notes is?

A. Well, I don't know of the character of all of them. I know the character of notes that would be in that classification, because I have seen a good many of them.

Q. Those promissory notes represent, in great part, money loaned, do they not?

A. No; I think that a very small part of them are loans.

Q. If they should represent money loaned, they would be in the same class as mortgage securities?

A. Well, it would make a difference all right. There would be more competition if they represented money actually loaned.

RE-DIRECT EXAMINATION

By Mr. Ryan:

Q. Judge O'Brien put a hypothetical question to you involving the suggestion that money might be loaned on real estate mortgages at the rate of two per cent, and you answered that theoretically one way, but would an answer given in response to the assumption of a real estate mortgage of two per cent ever be likely to be of any practical value in dealing with actual conditions as they exist now and have existed for a long time past?

A. No, I don't think so.

Q. Now, Judge O'Brien put this hypothesis to you, that an individual approached you with \$100,000 to invest, and that he also suggested the investment of that in bank shares, or in mortgages or in tax-exempt securities, and he inquired whether or not those things would not, under such circumstances, be in competition, and you said that that would bring them in competition.

A. In competition with each other.

Q. And if he added the proposal to buy real estate for \$100,000 or to buy railroad stock for \$100,000, or to buy stock in a factory, they would all then come in competition with each other in the same sense that you answered his question, would they not?

A. Yes.

RE-CROSS EXAMINATION.

By Mr. O'Brien:

Q. When you bring into competition shares of stock in

a manufacturing establishment, or shares of stock in a mercantile company, you are introducing a different class of property, are you not?

A. Well, I understood him to mean investments in all property.

Q. But an investment in something besides money or securities in which an interest is to be returned on money. You don't know, of course, whether it was classification between money used for the purpose of making money by a return upon money in the shape of interest and property upon which the investment was money for manufacturing or dealing in other business?

A. Well, there would be a difference in those, of course.

Q. My question was confined to investments in which money was dealt in. Mr. Ryan's amendment of that brought in a class of business in which it was not dealing in money, but dealing in manufacturing or real estate or something else; isn't that true?

A. Well, there is some difference.

Mr. O'Brien: There is a good deal of difference in law. That is all.

By Mr. Ryan:

Q. From the investor's standpoint, is there any difference between an investment in bank shares and investment in any other shares?

A. No; from the investor's standpoint, there wouldn't be any difference.

Q. And it is true that when capital is furnished for the banking business, it is not the expectation of the corporation to confine itself to the use of that capital by investing that capital only in interest-bearing securities, is it not? The fact is that the purpose is to attract to that institution loanable funds to an amount usually running twenty times the original capital; is not that characteristic of an investment in banking shares?

A. That is the effect that we try to bring about.

Q. And isn't that really the distinctive features of the banking business, the purpose, to attract to the corporation the money of others so that the corporation may have available to invest in interest-bearing loans or securities the money of others?

A. Yes.

Court here adjourned until Thursday morning, October 25th.

HENRY B. BACON,

recalled on behalf of plaintiff, in rebuttal, testified:

By Mr. Ryan:

Q. Mr. Bacon, you said you were the chief clerk of the Tax Commission?

A. Yes.

Q. And you have been such for how many years?

A. Fourteen years.

Q. And as such chief clerk you are familiar with the records and statistics of the Tax Commission?

A. Yes.

Q. Do you have special personal charge of the returns or reports relating to the taxation of banks?

A. Yes, I have charge of receiving the reports and examining the reports from all banks within the state.

Q. Can you tell us how the state banks were taxed in the year 1921?

Objected to as immaterial.

The Court: We will receive it subject to that objection.

A. They were taxed upon the amount of their capital stock. The practice is to take the amount of the capital stock, the amount of the surplus, the amount of undivided profits and other funds, and subtract from the total the amount invested in real estate, and take 40 per cent of the

balance or remainder as the amount for which it should be assessed.

Q. Now, are you able to say whether or not any state bank in 1921, in reporting for taxation, made any deduction from the items which you have given on account of bonds held by any such bank?

Same objection.

Received subject to objection.

A. There were no such deductions, so far as I have any knowledge. I have examined every report?

Q. You say you have examined every report?

A. I examine every report that comes to my desk.

Q. And there were no such deductions?

The Court: All this testimony will be taken subject to the objection.

Q. There were no such deductions by any bank?

A. None.

Q. And you know, do you not, that the assessment was made for 1921 everywhere against state banks upon that basis?

A. That is correct.

Q. Now, for the year 1922 was the assessment made in the same way?

A. Exactly in the same way.

Q. Did any state bank in 1922 claim any deduction on account of any bonds held by the bank?

A. I don't believe that there was.

Q. You believe that the assessments were made upon the same basis in 1922 as they were in 1921?

A. Exactly.

Q. Do you know whether or not any state bank in 1921 or 1922, claimed any deduction on account of the fact that a shareholder or shareholders, as a charitable institution, was entitled to a deduction?

A. No, there were none.

Q. You know of none?

A. I know of none.

Q. In 1922?

A. Either.

Q. Would that detail come to your attention?

A. Yes, it would come to my attention if it were made.

Q. Let me ask you specifically; do you recall the tax statement of the Merchants Trust & Savings Bank?

A. Yes.

Q. I will ask you whether or not that particular institution did not deduct?

A. If that is a state institution, that is one that did deduct.

Q. And what was that deduction?

A. For shares held by the Wilder Charities.

Q. And that deduction was made upon its report?

A. Yes.

Q. And in the assessment the deduction was allowed, was it not?

A. Yes.

Q. So that, summarizing the situation, it is true, is it not, that the taxes against state banks were levied and assessed and dealt with in 1921 and 1922 in exactly the same manner as they were during the immediately prior years?

A. Correct.

Q. Are you familiar with the instructions issued by the Tax Commission to assessing officers in respect to the manner in which bank shares, including the shares of property of the state banks, were to be assessed by them?

A. Yes.

Q. In what form are those instructions issued?

A. Why, some reference would be made in letters, which we call instructions to assessors. I didn't refresh my memory as to just what was done in 1921 or 1922 with reference to shares of bank stock, but the Tax Commission have held

meetings in every county of the state, and at every meeting they would give them specific instructions as to how to assess shares of bank stock, just quoting the law and giving them instructions.

Q. Now, the Tax Commission, in the instruction of the assessors, prepares or causes to be prepared an assessor's manual, does it not?

A. Yes, sir.

Q. By means of which they endeavor to instruct the assessors in their duties?

A. Yes, sir.

Q. And in 1921 and 1922 such manuals were prepared and were issued to all assessors, were they not?

A. They were given to all assessors.

Q. I show you State's Ex, 2 and ask you whether or not that is a copy of the assessor's manual to which you have referred, and whether or not the material on pages 42, 43, 44, 45 and 46 contains all the instructions issued in that manual to assessors concerning the taxation of shares or capital of state or national banks, private bankers and trust companies.

A. That is correct.

Q. Showing you State's Ex. 3, pages 44, 45, 46, 47 and 48, I will ask you whether or not that is a manual for the year 1922, and those pages indicated, whether or not they contain all of the instructions issued to assessors by the Tax Commission governing the assessment of the shares or property of state or national banks.

A. It is, yes, for 1922.

Q. Do you know of any other written instructions issued by the Tax Commission to assessors bearing upon that same subject?

A. I don't know whether there was anything contained in the written letter of instructions to assessors or not for

that year, but this at least would contain all that would be contained in the letters.

Q. You don't know of anything contained in those letters. If, on examining them, you find that there is, will you supply them for the record?

A. I will, yes.

Q. State's Exs. 2 and 3, with reference to the pages given, introduced in evidence without objection on the ground of incompetency, but objected to as being immaterial.

Received subject to the objection.

Mr. Ryan: In connection with Mr. Bacon's testimony, I desire to offer in evidence, as State's Ex. 4, the report of the Minnesota Tax Commission for the year 1910, chapter 17, pages 170 to 195, and paragraph 9 of chapter 24 (page 305) of that report, being a discussion of the matter of the desirability or lack of desirability of substituting a money and credits tax for the existing system of taxation, followed by a recommendation to the Legislature that a money and credit tax bill be so proposed and enacted.

Objected to as argumentative and incompetent, and immaterial.

Received subject to objection.

Q. Now, I show you State's Ex. 5, a statement of the amount of assessments and taxes levied on money and credits for the years 1907 to 1923, inclusive, and ask you whether or not that exhibit was prepared by you from the records of your department?

A. It was.

Q. Now, for the year 1907 to 1910, inclusive, money and credits were not assessed as money and credits, as they are now and have been since that date, are they?

A. They were not.

Q. How were you able to ascertain the amount of the assessment equivalent to the assessment after that date upon money and credits as they have been since listed?

A. I added up the different items of personal property which relate to money and credits and which were money and credits and took that as the basis.

Q. Prior to 1911, then, the personal property general tax list was so itemized that you could extract from it the items which now go upon the separate money and credits list?

A. Approximately, yes.

Q. How were you able to ascertain the tax rate for the years 1907 to 1910?

A. I took the general average tax rate of the state for that particular year.

Q. So that the tax rate is not the actual rate, that is, you didn't go into every taxing district in the state and apply its tax rate to the money and credits that you found listed there, but that you arrived at it by an approximation?

A. Yes; it was the average tax rate for the state applied to the total assessment of money and credits returned.

Q. How did you calculate your average tax rate?

A. By dividing the amount of the assessment of all property and the amount of tax—the total amount of tax.

Q. Do you believe that the results that you have arrived at in those items are approximately correct?

A. They are.

Q. Can you form an estimate as to how much they might at the most vary from the exact figures, if you have been able to get that?

A. Not more than one mill, I don't believe.

Q. And as to the figures from 1910 to 1923, inclusive, both as to the number assessed, the amount of assessment, the rate and the amount of tax, those figures are the exact figures, are they not?

A. 1911 to 1923, are, yes, except as to 1923. That is made up now under the terms of the County Auditor and is not entirely complete for the reason that the Tax Com-

mission are now still making re-assessments of money and credits for 1923 which will somewhat increase that sum.

Q. But the increase will be relatively small?

A. Yes.

Q. Considering the total?

A. Very small.

Q. Can you indicate the percentage, the amount of the tax which as a limit it will be increased by?

A. Not more than perhaps two and a half million dollars of an increase.

Q. That is two and a half million in the amount of the assessment?

A. Increase the amount of the assessment probably two and a half million dollars.

Q. Now, below that on the exhibit, we find similar figures for Ramsey county.

A. Ramsey county, yes.

Q. Now, as to Ramsey county, as to the figures there, the years 1907 to 1910 inclusive, are gotten in the same way, by that same method that you used throughout the state?

A. Yes.

Q. But the tax rate there is exact, is it not?

A. Both tax rate and assessment.

Q. And No. 11, on the numbers assessed, the amount of the assessment, the rate and the amount of tax are all exact?

A. Yes, they are.

State's Ex. 5 introduced in evidence without objection.

Q. I show you State's Ex. 6. That purports to be a "statement showing the total amount of general property tax levies in Ramsey county for the years 1907 to 1922, inclusive, the amount of taxes levied on"—you had personal property—changed it to read "share of national banks in said county during the same period and percentages that the amount of such personal property tax on said national

bank bears to the whole for each of said years." That exhibit was prepared by you?

A. Yes, it was.

Q. It is just what it purports to be, and is correct?

A. That is correct.

State's Ex. 6 introduced in evidence without objection.

Q. I show you State's Ex. 7, purporting to be a "Statement of amount of state taxes for the years 1907 to 1922, both inclusive, from all sources, together with amount of state taxes paid by national and state banks for the same period, and percentages the amounts paid by banks bear to the whole for each year." That statement was prepared by you from your records?

A. Yes it was prepared by me.

Q. And you believe it to be correct, do you not?

A. I believe that is correct.

State's Ex. 7 introduced in evidence without objection.

Q. Do you know what national banks in the state failed to pay their taxes for the year 1921?

A. The First National Bank of St. Paul and the First National Bank of St. Cloud, First National Bank of Browerville, First National Bank of Eagle Bend.

Q. Can you give us the same information for the taxes for the year 1922?

A. No, I can't.

Q. Do you know about what banks—

A. No, I don't know. I wouldn't be able to say what banks failed to pay their taxes for 1922, that is, national banks.

Q. Prior to 1921 all national banks habitually and usually paid the taxes assessed against them in the manner which you have described?

A. Yes, they did.

Q. The national banks didn't oppose the tax during the years 1911 or the subsequent years?

A. Not so far as I know.

CROSS-EXAMINATION.

By Mr. O'Brien:

Q. You were with the Commission at the time the report for 1910 was issued?

A. Yes, sir.

Q. And assisted in the preparation of that report?

A. Well, in the same manner, yes.

Q. And assisted in the preparation of Chap. 17 of that report which has been offered in evidence here?

A. Not insofar as the writing of the text is concerned. I might have furnished some statistics, but further than that—

Q. You furnished statistics?

A. I might.

Q. Now, prior to the time at which this report was issued, the report of 1910, the property which we have designated, money and credits in this case, and which is included within the items found in the exhibits, for instance, Ex. 8 segregating that property, was taxed as personal property at whatever the full rate was upon personal property?

A. Yes, it was.

Q. And it consisted of what I notice has been called intangible property. You consider the debts, whether evidenced by promissory notes, or by entries in books, or by any other means, is intangible property?

A. Certainly is.

Q. And shares of stock in corporations coming under the same classification?

A. Shares of stock in corporations—shares of stock of

property which is not assessed or taxed in this state has been made—

Q. Whether it is assessed or taxed in this—

A. Intangible property.

Q. It hasn't changed its character as to tangible property?

A. No.

Q. I am speaking of what you consider intangible property. Money is hardly classed as intangible property, but is in a class by itself, is it not?

A. Yes, sir.

Q. So, when the term "money and credits" is used, it includes all actual money, all demands for money, does it not?

A. It does.

Q. And all investments in the stock corporations?

A. Yes, that is true.

Q. And that class of property being much more easily concealed than such property as cattle, horses or wagons or household furniture, escape taxation?

A. Very largely.

Q. To a great extent. And the object of the Tax Commission of this state in recommending a classification by itself of money and credits and placing a three-mill tax upon that property was for the purpose of putting it upon the assessment rolls?

A. Yes, that was it.

Q. And in that your efforts have been very successful?

A. Very much more so than it was prior to 1911.

Q. In the twelve years that have passed since this law has been enacted, the amount of property of that class and character reached for taxation has gone up from how much?

A. In 1910, the last year it was assessed under the general property system, it was \$13,919,806. The peak year was in 1920 when we had \$443,092,869.

Q. And so it may be said that the efforts of the Commission have been entirely successful or quite successful.

A. Quite successful, yes.

Q. Do you know of any class of monied capital, not included in the shares of state or national banks, which does not come under the classification of money and credits in the state of Minnesota?

A. You mean trust companies?

Q. No, I don't mean that. I mean just what I said. Do you know of any class or kind of monied capital, not included in shares of stock of banks, which does not come under the designation of money and credits?

A. No, I do not.

The Court: How about Minnesota mortgages?

Mr. O'Brien: May it please the Court, I claim that Minnesota mortgages come within that classification but that because of the registry tax they are exempt from taxation.

Q. So that the result of the efforts of the Tax Commission and the result of the amendment of the law placing a tax upon money and credits has been to include in that classification all of the monied capital that you can think of and has increased the amount of that property for taxation from 13 million, in round numbers, to 443 million?

A. That is true.

Q. Mr. Bacon, I show you State's Ex. 2, being the Assessor's manual for the year 1921, and call your attention to page 42. Do you know the date at which that manual was prepared?

A. This 1921 manual I think was prepared in the years 1920 and 1921.

Q. Was it prepared before or after April 21, 1921?

A. I believe that perhaps there might have been some of it in 1921. It was necessarily made up before that time.

Q. So that it was made up and printed prior to the passage of Chap. 416, Laws 1921?

A. It was.

Q. It does not refer in any place to Chap, 416, Laws 1921?

A. It does not.

Q. It naturally couldn't. And the section of the statute cited upon page 42 as a guidance to the county and city and local assessors with reference to the taxation of stock in banks was the old law and not the law that was actually in force after April 21, 1921?

A. Yes, this was under the old law.

Q. And I understand you to say that the local assessors followed this manual?

A. We have manuals now for 1922 and 1923. We have the 1923 manual.

Q. You couldn't put in your manual a law that hadn't been passed at the time you prepared it, but what I want to know is, you say that the taxing authorities of the state of Minnesota in the year 1921 followed this manual?

A. That was the instruction.

Q. So far as you know, they did follow it?

A. I do.

Q. You just testified that the state banks paid the taxes as directed in this manual?

A. They did.

Q. That manual didn't state the law as it was on that date?

A. It stated the law as it was at the time it was put into effect.

A. Yes, but not as it was after the 21st of April, 1921; isn't that so?

No answer.

Q. (State's Ex. 7 shown witness.) I notice the legend upon that table is "Statement of amount of state taxes for

the years 1907 to 1922, both inclusive," and so on. Does that mean that the taxes which you have shown here are only the levy for state purposes.

A. Taxes collected by the State, yes.

Q. For the State itself?

A. Yes, for the State.

Q. It doesn't include county, township, village—

A. It doesn't.

Q. —or city tax or school taxes?

A. Except as to what they call a general state school tax. It is a state tax, however.

Plaintiff rests.

CYRUS P. BROWN,

recalled on behalf of defendant, in sur-rebuttal, testified:

By Mr. O'Brien:

Q. Mr. Brown, I omitted to ask you to what extent the First National Bank of St. Paul does business in the state of Minnesota outside of the City of St. Paul and Ramsey county.

A. Very largely over the entire state.

Q. As a matter of fact, it does business outside of the state of Minnesota, does it not?

A. Yes.

Q. It loans money outside, but you have a considerable line of loans outside of the city of St. Paul and the County of Ramsey?

A. Yes, very, very large.

Q. In the state of Minnesota?

A. In the state of Minnesota.

CROSS-EXAMINATION.

By Mr. Ryan:

Q. How are such loans made?

A. They are made direct to the borrower in cases of merchants or manufacturers. In other cities of the state they are made to local banks, often through local banks, but we make them direct to the borrower.

Q. What would you say as to your loans to individuals outside of Ramsey county directly to individuals amounted to on May 1, 1921?

A. I couldn't tell you that.

Q. I mean in round figures or roughly so as to give us an idea relatively as to what their proportion to your—

A. To our total loans? In 1921 it would be many, many million dollars.

Q. To individuals outside of the county?

A. To individual firms, yes.

Q. Who had made direct application?

A. Direct application to us. For instance, we loan in Duluth alone many million dollars. We loan in Hennepin county, Minneapolis, many million dollars; we loan throughout the state in lesser degree in the smaller places to local merchants or manufacturers.

Q. The local merchant comes to St. Paul—

A. Absolutely.

A. —and applies to you for a loan?

A. Absolutely. For instance, a small place, the Eagle Roller Mills, New Ulm, they came to us direct and we gave them a line of credit for several hundred thousand dollars. Take the Duluth firms. Take practically every large firm in the state located in a small place, which hasn't sufficient banking accommodations of its own to carry on its business, it of necessity has to come to the larger centers to borrow money.

Q. You say that amounts to several million dollars as of May 1, 1921, or any other given year?

A. Yes. I can't give you the exact amount. If we would loan to A. D. Thompson of Duluth we would loan them a million dollars at a time, and others, as of May 1st. It is a time that the shipping is opening up at the Lake, and finance their trade. The Consolidated Elevator Company, half a million dollars in Duluth, and many—

Q. Take those Duluth people whom you point to, are your relations with them entirely independent of any Duluth bank?

A. Absolutely. They carry balances with us and the paper doesn't go in any way, directly or indirectly, through a Duluth bank—Kelly, Hoy & Thompson of Duluth.

Q. They do carry local deposits?

A. They carry local deposits, and in Duluth they have a line there. They carry a local deposit with us, and they carry in Chicago and New York just the same as our local jobbers.

Defendant rests.

Testimony closed.

Case to be submitted on briefs.

(Title of Cause.)

FINDINGS OF FACT.

These causes came on for hearing on the 22nd day of October, 1923, H. H. Peterson, County Attorney, Rollin L. Smith and Patrick J. Ryan appeared for the plaintiff, and O'Brien, Horn & Stringer appeared for the defendant, The First National Bank of St. Paul, Minnesota.

Upon due consideration of the testimony, the admissions of the parties, and the arguments of counsel, the Court finds as Facts:

1. The defendant is and during the times named in the

answers has been a national banking association duly organized and existing under and pursuant to the national banking laws of the United States of America, and having its principal office in the City of St. Paul, in the County of Ramsey, State of Minnesota.

2. As such corporation said bank is an instrumentality of the United States of America, and there can be no taxation of the defendant, or its property or the shares of its capital stock by or under the authority of the State of Minnesota, or any political subdivision thereof, otherwise than in conformity with the terms and restrictions embodied in the assent given by Congress, as set forth in Section 5219, Revised Statutes of the United States, reading as follows:

“Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the Association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to two restrictions, that the taxation shall not be at a greater rate than is assessed upon other monied capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in such city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt real property of associations from either state, county or municipal taxes to the same extent, according to its value, as other real property is taxed.”

3. The value of the shares of stock of banks in the State of Minnesota organized under the national banking laws of the United States and the value of the moneyed capital of

state banks and mortgage loan companies organized under the laws of Minnesota, for the years 1921 and 1922, was determined pursuant to the provisions of Chapter 416, laws of 1921, and the unrepealed parts of Acts existing at the time of the enactment of the 1921 law. The taxing authorities, in determining the valuation of all such banks and companies for the years 1921 and 1922, applied the method theretofore applied for some years immediately prior to such determination which was the method provided by Sections 2017 and 2018, G. S. 1913; that is, the valuation was determined by taking the amount of the capital stock, the amount of the surplus, the amount of undivided profits and other funds, and subtracting therefrom the amount of legally authorized investments in real estate, and forty (40) per cent of the balance or remainder, was taken as the basis for valuation and the amount to be assessed, and no deduction was claimed or made on account of bonds held by any such bank.

4. The full and true value of the shares of the capital stock of the defendant for the year 1921, as so determined, after deducting real estate, was \$6,002,218.01, and said shares were assessed at forty (40) per cent of such full and true value, being \$2,400,887.20, which was taxed at a rate of 67 mills, and the amount levied as taxes was \$160,859.54. The full and true value of the shares of the capital stock of the defendant for the year 1922, as so determined, after deducting real estate, was \$6,528,104.06, and said shares were assessed at forty (40) per cent of such full and true value, being \$2,611,240, which was taxed at a rate of 61½ mills and the amount levied as taxes was \$160,591.26.

5. "Money" and "credits" as defined by Section 798 Revised Laws 1905 (now Section 2316, General Statutes, 1913) were returned and assessed for the years 1921 and 1922 for the State of Minnesota, and for the County of Ramsey, as follows:

STATE

1921
\$422,745,839

1922
\$400,688,948

COUNTY

\$83,965,268

\$87,796,840

Such money and credits are exempted from taxation other than three mills of the fair value thereof without deduction of debts from credits listed for taxation. Such return and assessment did not include money or credits belonging to incorporated banks situated in this state nor any indebtedness on which tax is paid under Sections 2301 to 2309, General Statutes 1913, nor bonds exempt by law.

6. The total amount of such money and credits as listed and assessed in the City of St. Paul, in the County of Ramsey, in the years 1921 and 1922 by corporations and individuals in cases where the return exceeded Four Thousand Dollars (\$4,000), was as follows:

	1921	1922
Corporations	\$51,464,497	\$48,839,758
Individuals	25,170,614	27,825,885
Total	\$76,635,111	\$76,665,643

the same being approximately 91 per cent of the total amount returned and listed as money and credits in the years 1921 and 1922.

X 7. No material or substantial portion of the money and credits so listed and assessed consisted of moneyed capital in the hands of individual citizens of this state coming into competition with that of national banks or causing any inequality or discrimination in taxation as against national banks or their shareholders generally. A comparative statement showing the condition of the defendant on the first day of May, 1921, and on the first day of May, 1922, is as follows:

COMPARATIVE STATEMENT SHOWING CONDITION OF THE FIRST NATIONAL BANK

OF ST. PAUL, MAY 1, 1921, AND MAY 1, 1922,

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RESOURCES

	May 1, 1921.	May 1, 1922.
Loans and Discounts	\$30,459,384.24	\$26,489,898.41
Overdrafts	8,007.80	2,709.96
Customer's Liability Account of Acceptances.....	.....	.....
U. S. Government Securities Owned.....	3,453,665.06	11,343,234.95
Other Bonds, Stocks and Securities.....	1,428,272.84	2,710,730.03
Banking House Furniture and Fixtures	556,199.42	533,606.46
Other Real Estate Owned.....	.....	.....
Lawful Reserve with Federal Reserve Bank.....	2,118,449.30	2,786,649.41
Items with Federal Reserve Bank for Collection..	848,206.55	426,459.97
Cash and Amount Due from National Banks.....	4,777,046.45	5,828,689.21
Amount Due from State Banks & Trust Companies	1,691,372.73	2,177,737.15
Exchanges for Clearing House.....	627,612.48	524,821.58
Checks on Other Banks in Same Place.....	192,384.40	187,943.62
Outside Checks and Cash Items.....	384,768.82	375,887.25
Redemption Fund .....	.....	.....
Other Assets	26,375.12	72,762.34
Total Resources	<u>\$46,571,745.21</u>	<u>\$53,461,130.34</u>

LIABILITIES

Capital Stock Paid in.....	\$3,000,000.00
Surplus	2,000,000.00
Undivided Profits, less Expenses; Int. and taxes.	1,371,847.48
	<u>1,394,585.04</u>

National Bank Notes Outstanding.....	.....	.....
Amount Due Federal Reserve Bank.....	.....	5,311,484.91
Amount Due National Banks.....	4,379,197.01	4,954,331.39
Amount Due State Banks, Bankers. & Trust Cos..	4,127,603.59	27,591.07
Certified Checks Outstanding.....	44,000.86	188,650.54
Cashier Checks Outstanding.....	182,771.71	28,547,905.22
Demand Deposits	21,039,275.61	5,683,908.56
Time Deposits	5,635,010.50	1,606,680.56
U. S. Deposits	1,386,419.16	.....
U. S. Bonds Borrowed	2,693,500.00	.....
Other Bonds and Securities Borrowed .....	.....	.....
Bills Payable and Rediscounts .....	.....	.....
Letters of Credit and Travelers Checks issued for cash .....	.....	.....
Acceptances Executed for Customers .....	.....	.....
Acceptances Executed by other Banks.....	.....	.....
Other Liabilities	712,119.29	745,993.05
Total Liabilities	<u>\$46,571,745.21</u>	<u>\$53,461,130.34</u>
Total Capital Surplus & Undivided Profits.....	6,371,847.48	6,394,585.04
Total Banking House Furniture and Fixtures....	556,199.42	533,606.46
Total U. S. Bonds and Securities	3,453,665.06	11,343,234.95
Total other Bonds, Stocks & Securities.....	1,428,272.84	2,710,730.03
Total Deposits	36,794,278.44	46,320,652.25

8. The Northwestern Trust Company is engaged in the usual business of a trust company, including, among other things, the performance of lawful trusts, and the investment of funds in bonds and mortgages. At the times in controversy the Merchants Trust & Savings Bank, the Capital Trust & Savings Bank, both of St. Paul, Minnesota, and The Minnesota Loan & Trust Company, of Minneapolis, Minnesota, were engaged in business of the same general character as that of said Northwestern Trust Company. In addition, each of the three corporations last named conducted a savings bank department.

On the first day of May, 1921, the capital of The Northwestern Trust Company was \$1,000,000 and its surplus and undivided profits on May 1, 1921, and May 1, 1922, were \$380,000. At the same times, the capital of Minnesota Loan & Trust Company was \$1,000,000; its surplus, \$1,000,000, and its undivided profits between \$300,000 and \$400,000. The capital of Merchants Trust & Savings Bank is \$500,000.

The Northwestern Trust Company is affiliated with the defendant and its ownership and that of the defendant is practically the same.

The Minnesota Loan & Trust Company is owned and controlled by and affiliated with The Northwestern National Bank of Minneapolis, Minnesota.

The Merchants Trust & Savings Bank is owned and controlled by and affiliated with the Merchants National Bank, of St. Paul, Minnesota.

The Capital Trust & Savings Bank was affiliated and operated in close harmony with the Capital National Bank of St. Paul, Minnesota.

Wells-Dickey Company (an investment company) and Wells-Dickey Trust Company, (a banking company) are affiliated Minnesota corporations having their principal place of business in Minneapolis, Minnesota.

The money under the control or in charge of the said trust

companies, aggregating a very large sum, is invested, to a very material extent, in bonds and mortgages. The stockholders of these companies are generally citizens of Minnesota. All of the said trust companies are operated as adjuncts of their affiliated banks and as aids to the business of such banks.

9. In addition to money borrowed by them from banks, commercial houses in the State of Minnesota in the years 1921 and 1922 borrowed money through brokers, the amount being estimated as in excess of \$40,000,000 per year. Ordinarily, such loans were obtained by the broker from banks throughout the country and usually the interest of the broker was his brokerage fee. The money so borrowed, to a very large extent, was paid by the borrower to the banks, and only a small percentage was paid to individuals. No considerable portion of such loans were made by brokers having their places of business within the County of Ramsey, a very great part of such loans having been procured from brokers in business in the eastern portion of the United States.

X It does not appear that any such brokers who were individual citizens of Ramsey County employed capital in substantial amounts in their business nor does it appear that their capital was taxed at a lower rate than that applied to shares of national banks. In a large degree the competition represented by the broker was competition coming through him from the banks and reflects the competition of banks between each other. They are not competitive with the business of national banks in any substantial degree and in general are in aid of the banking business.

10. In the assessment of the value of the shares of capital stock of the defendant and the taxation thereof, no discrimination was made in favor of competing moneyed capital in the hands of individual citizens or in favor of other

moneyed corporations, and no injustice or unequal burden was inflicted or cast on the defendant.

11. The law of Minnesota relating to such assessment and taxation is neither unequal nor unfair as to national banks or their shareholders and does not permit discrimination in favor of competing moneyed capital in the hands of individual citizens or in favor of state banks or other competing institutions. The assessment of value and levy of tax upon the shares of stock of the stockholders of the defendant as made for the years 1921 and 1922 are in accordance with the provisions of Section 5219, Revised Statutes of the United States, and are valid.

As CONCLUSIONS OF LAW, the Court finds that the State is entitled to judgment against the defendant for the amount claimed as taxes for the years 1921 and 1922, as above recited, together with interest, penalties and costs as provided by law, and the costs and disbursements of this proceeding.

Let judgment be entered accordingly.

Proceedings stayed forty days.

Dated September 11, 1924.

CHARLES BECHHOEFER,
District Judge.

MEMORANDUM.

(As Amended.)

I.

This proceeding involves the construction and application of Section 5219, Revised Statutes, U. S., relating to the taxation by the State of the shares of national banks. The defendant claims that the tax as levied is void for the reason

that there has been an illegal discrimination against the shares of stock in the defendant bank in contravention of the Federal Act.

The Act providing for the organization of national banks passed February 25, 1863, (12 Stat. 665), contained no provision concerning state taxation of the shares of national banks. This Act materially amended was re-enacted on June 3, 1864, (13 Stat. L. 111). State taxation of the real estate held by national banking associations, and of the interest of the private citizens in the shares of such associations was authorized by three provisos to the 41st section of the Act, which prescribed the measure and rule of state taxation. These provisos are as follows:

- (1) "Provided, that nothing in this act shall be construed to prevent all the shares in any of said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority, at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.
- (2) "Provided, further, that the tax so imposed under the laws of any state shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state where such association is located.
- (3) "Provided, also, that nothing in this Act shall exempt the real estate of associations from either state, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed."

In *Van Allen v. Assessors*, 3 Wall, 573, 18 L. Ed. 229, and *Bradley v. The People of the State of Illinois*, 4 Well,

459, 18 L. Ed. 433, the Supreme Court of the United States, in construing the tax provision of the national bank act, held that as the capital of state banks may consist of the bonds of the United States, which are exempt from state taxation, a tax on the capital is not equivalent to a tax on the shares. The state act provided for taxing the capital of state banks, but no tax was specifically imposed on the shares held by the stockholder.

Subsequent to these decisions, by amendment adopted in 1868, the second proviso was omitted (15 Stat. L. 34), and in its amended form the Act provided that the Legislature of each state may determine and direct the manner and place of taxing all the shares of national banks located within said state subject to the restriction "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." It will be noted that by the act of 1864 the rate must not exceed the rate imposed upon the *shares* of state banks, while by the 1868 amendment the clause as to the rate imposed upon shares of state banks was eliminated and as modified the law provides that the rate must not exceed that assessed upon other moneyed capital in the hands of individual citizens of the state.

(See *Mercantile National Bank v. New York*, 121 U. S. 148.)

In *Richards v. Rock Rapids*, 31 Fed. 505, 507, in speaking of this change in the law, the Court said:

"If this clause of the Act remained in force, it would still be a question whether savings banks were properly included within the term 'banks' as therein used; but the clause itself has been repealed, and therefore the ruling in *Hubbard v. Board Sup'rs* (23 Iowa, 130) so far as it is based thereon is wholly inapplicable to the case now before the court.

Section 5219 of the Revised Statutes does not contain this proviso.

As the law now is, the right of the state to tax shares in national banks is not dependent upon the question whether shares in state or savings banks are taxed. The right to tax such shares exists, and the manner of imposing the tax is for each state to determine for itself, subject only to the two restrictions above cited, (those contained in Section 5219, R. S.). It is not, therefore, sufficient, as is assumed in argument, to show merely that the state laws provide a different mode or manner of taxing moneyed capital invested in savings banks or other corporations from that applied to the taxation of money invested in national banks. Before the assessment of the shares in the national banks can be held invalid and void, it must be shown there is in fact a higher burden of taxation imposed upon the money invested than is imposed upon other moneyed capital."

And when the question of alleged discrimination was again presented in the recent case of *Des Moines National Bank v. Fairweather*, 68 L. Ed., 71 (advance sheets), the Supreme Court, in sustaining the tax said:

"The capital of private bankers is taxable, save the part invested in exempt government securities. The state taxes all of that capital, save the exempt securities. They are exempt because the United States makes them so, and the statute merely respects the exemption. In what is thus done does the state discriminate against national bank shares and in favor of other moneyed capital in the sense of the restriction?"

And the Court held that allowing the deduction of the value of securities of the United States held by a private banker from his capital for purposes of taxation, and refusing to permit the deduction of such securities from the capital of national banks in fixing the value of their shares

for purposes of taxation, does not tax the shares of bank stock at a higher rate than other moneyed capital in the state, in violation of U. S. Rev. Stat., Section 5219.

II.

Defendant denies that the Fairweather case governs in the case of state banking corporations and contends that Chapter 416, Laws of 1921, "established a method which placed a greater burden of taxation upon the shareholders in national than in state banks, and which resulted from and was produced directly by the law itself." It is conceded that the method of assessment provided by Sections 2017 and 2018, G. S. 1913, was valid, for the reason that the act imposed the tax upon the shares, whether of national or state banks, but it is claimed that by the Act of 1921 the tax is imposed upon the capital of state banks and not upon its shares and from this it follows that exempt United States securities must be deducted, and a discrimination arises in favor of the state banks; and the further claim is made that the amendment was "voluntary and intentional." Upon this contention, defendant claims that the tax levied upon national bank shares is void.

Sections 2017 and 2018, G. S. 1913, are nearly identical. By Section 2018 an omission in Section 2017 relating to a sworn statement in the case of mortgage loan companies was supplied, and to the last clause of Section 2017, there was added a provision referring to the listing of shares of national banks not located in this state. By Sections 2017 and 2018, the shares were to be valued for the purpose of taxation at their true and full value, but the classification statute enacted later changed this to forty per cent of the true and full value. By the old law, the cashier was obliged to show by sworn statement the amount and number of shares of capital stock and *the surplus or reserve fund*. In

this situation the legislature enacted Chapter 416, Laws of 1921. It re-enacts in concise form most of the existing law, but broadens its scope through certain changes made apparently with the aim of conforming more fully to the congressional assent. Its terms do not indicate a purpose to apply a different basis in the valuation and taxation of the shares of state banks than that employed in the valuation and taxation of the shares of national banks.

Analyzing the statute briefly, its purpose as expressed in the title is to provide "for the assessment and taxation of the shares of banks organized under the laws of the United States and the moneyed capital of banks and mortgage loan companies organized under the laws of this state."

In lieu of the requirement of a statement of the "surplus or reserve fund" there is substituted the more comprehensive statement "surplus, undivided profits and all other funds." The 1921 Act repealed Sections 2017 and 2020 and all other acts or parts of acts, "*in so far as they are inconsistent*" therewith. Since the 1921 act contains no provision for listing of the shares of the bank, it did not repeal the provision of the old law requiring the cashier or other officer to list for assessment all shares of the bank in the same manner as the general property of the bank is listed and it follows that this provision in the old law must be read with the new law. The same may be said as to the provisions of Sections 2020 and 2021 so far as not inconsistent with the 1921 act.

1. By the 1921 act (a) shares of national banks are to be taxed, (b) moneyed capital (the designation employed in the Act of Congress) of state banks it to be taxed.

2. The same method of valuation of both the national bank shares and moneyed capital of state banks is provided. In each case, there must be furnished a sworn statement showing the amount and number of shares of the capital stock; the amount of surplus, undivided profits and all other

funds and the amount of legally authorized investments in real estate and in both cases the method of valuation is the same.

3. The national bank as agent of its shareholders pays the tax, and the state banks pay the tax on the moneyed capital. Both as to assessment and levy of tax, the new law has been construed by the taxing authorities and accepted by the taxpayer in the same way as Sections 2017 and 2018, G. S. 1913. The shares of both national and state banks have been listed for assessment in the same way as required by said sections.

In the circumstances, a proper construction of the Act of 1921 is that the payment of the tax by the state bank is as agent of its shareholders just as in the case of national banks, for, in both cases, a single payment by the bank discharges the tax as to both bank and its shareholders. Such a construction is in accord with the reason and spirit of the act. (Dunnell's Minn. Digest, Sec. 1576.) It gives effect to the act and in practical operation has been considered a correct construction.

As stated in Cooley on Constitutional Limitations, 255, Seventh Edition:

"The Court, if possible, must give the statute such a construction as will enable it to have effect, * * * the Court must construe the statute in accordance with the legislative intent; since it is always to be presumed the legislature designed the statute to take effect, and not to be a nullity."

"As every presumption is in favor of the statute, if it is open to two constructions, one of which would obey and the other violate the Constitution, the universal rule of courts is to select the former."

People ex. rel., Simpson, v. Wells, 181 N. Y. 252,
73 N. E. 1025.

People v. Feitner, 191 N. Y. 88-96, 83 N. E. 592.

In the final analysis, "the question of discrimination against national banks is one of fact and not one of the possible effects of the tax statute."

3 Cooley on Taxation, Sec. 1000, 4th Edition.

Commercial Trust Co. of New Jersey v. Hudson County Board of Taxation, 86 N. J. L., 424, 434, 92 Atl. 263.

Mechanics Nat. Bank of Trenton v. Baker, 65 N. J. L. 113, 46 Atl. 586.

Davenport Bank v. Davenport, 123 U. S. 93.

Since, in the instant case, there was no discrimination against national banks in favor of state banks, "the possible effects of the tax statute" requires no further consideration.

III.

The burden is on the stockholders or the bank as their agent to show such discrimination. They must show the necessary facts, which includes a showing that the amount of other moneyed capital in the taxing district is substantial and that the moneyed capital claimed to be given an unjust advantage does come into competition with the business of national banks, (Cooley on Taxation, Sec. 1000, 4th Ed.); and it must be satisfactorily made to appear by the proof that the moneyed capital claimed to be given an unjust advantage is capital which comes into competition with the business of national banks. (Commercial Bank v. Chambers, 182 U. S. 560; First Nat. Bank v. Chapman, 173 U. S. 205-219.)

The term "moneyed capital" as used in Rev. Stat. U. S., Sec. 5219, embraces capital employed in national banks and capital employed by individuals when the object of their business is the making of profit by the use of their moneyed capital as money,—as in banking as that business is defined

in the opinion of the court. (*Palmer v. McMahon*, 133 U. S. 660, 667.) As defined in *Mercantile Bank v. New York*, 121 U. S. 138: "The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations." And as stated in *First National Bank of Aberdeen v. County of Chehalis*, 166 U. S. 440: "The main purpose, therefore, of Congress in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions of individuals carrying on a similar business and operations and investments of a like character." The Act simply requires that capital invested in national banks shall not be taxed at a greater rate than like property similarly situated. It forbids an unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character.

It was not intended to cut off the power of the Legislature to exempt from taxation particular classes of property if "these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares."

Mercantile Bank v. New York, 121 U. S. 138.

"The rule of the *Mercantile Bank* case practically comes down to a disregard of formal legal discrimination where there is in fact no substantial economic discrimination."

31 *Harvard Law Review*, 366 and 367.

In the recent case of *Merchants National Bank v. The City of Richmond*, 256 U. S. 638, the Supreme Court, following previous decisions to the same effect, held that "the words 'moneyed capital' in the hands of individual citizens * * * include not only moneys invested in private banking, properly so-called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking."

The Court in declaring the state tax discriminatory and unlawful, said, "that upon the undisputed facts the ordinance and statute under which the stock of plaintiff in error was assessed, as construed and applied exceeded the limitation prescribed by Sec. 5219, Rev. St., and hence that the tax is invalid."

The decision of the state court (*Richmond v. Merchants Natl. Bank*, 124 Va. 527) indicates that the question of competition of moneyed capital in the hands of individual citizens was deemed immaterial. In the language of the Court:

"Obviously, the general purpose of the Federal statute is to prevent discrimination by the States in favor of state banking associations against national banking associations; and no such discrimination is suggested or shown from this record to exist."

and as stated in the syllabus:

"The general purpose of Section 5219 of the Revised Statutes of the United States is to prevent discrimination by the States in favor of State banking associations, against national banking associations, so that the phrase 'moneyed capital,' used therein, means capital engaged in the operations of banking, which is used as a source of profit."

This erroneous construction of the law, opposed as it was to the law as decided by the Supreme Court of the United

States, coupled with the fact that competition of moneyed capital of private citizens was not disputed, made inevitable a reversal of the decision of the state court.

So in *People ex rel., Hanover Nat. Bank v. Goldfogle*, 234 N. Y. 345, the relator alleged unjust competition and the respondent made no attempt to controvert this claim. The lower court found the claim of relator to be true and no exception was filed thereto and no appeal taken. The appellate court said: "The court below has found that the competing capital in the hands of individuals subject only to the personal property income tax, is very large." The facts then showed a substantial discrimination in favor of the individual citizen and the ruling in the *Richmond* and prior cases was applied. (See an interesting discussion of these two cases in *Proceedings of 16th Annual Conference of National Tax Association*, 1923, pp. 194, 195, 208 and 209.)

IV.

Applying the principles as stated, does the evidence in the instant case sustain the claim of an unlawful discrimination in favor of moneyed capital in the hands of individual citizens?

1. "Money and credits" listed pursuant to Sec. 2316, G. S. 1913, are taxed at the rate of three mills and by the terms of the act, they are exempt from other taxation. The form of return for such personal property shows a classification into fifteen classes. Defendant's Exhibits K and L include the individual returns of "money and credits" listed by individuals in the City of St. Paul in the years 1921 and 1922, in cases where the individual returns exceed \$4,000. These exhibits show a return of approximately 91% of all such property listed by individuals in the years 1921 and 1922, aggregating \$52,996,499.

It is contended that items 4, 5, 6, 7 and 15 constitute moneyed capital coming into competition with the business of national banks.

Item 4. The evidence tends to show that almost the entire amount of this item consists of promissory notes given in settlement of past due indebtedness. It may be fairly assumed that this item amounting to \$4,130,256 does not come into competition with the banking business and there is no proof that such competition exists.

Item 5. The evidence tends to show that this item, amounting to \$17,527,930, includes in a large degree bonds bought for investment purposes and not as speculations, and that usually the investment has not been made in a business competing with banks, but has been made with surplus funds not required by the individual for business purposes.

Item 6. Mortgages upon lands outside the State of Minnesota aggregating \$3,890,870. The testimony tends to show that to a large extent such mortgages are negotiated by banks, investment companies and trust companies, and sold by them to individuals and corporations to be held as long time investments. In these cases, such investments are not in competition with the banking business.

Item 7. Unrecorded mortgages on land within the state amounting to \$186,730. The amount is not substantial and can have no appreciable effect or bearing upon the question at issue.

Item 15. Shares of stock in corporations the property of which is not assessed or taxed in the state, amounting to \$10,782,105. In the absence of proof of the nature and purposes of these corporations, it cannot be assumed that this is moneyed capital competing with national banks. It is a matter of common knowledge that private citizens hold large investments in railroad and industrial stocks which would come under this item.

The other items included in Exhibits K and L are not shown to be moneyed capital coming into competition with the business of national banks.

In *Bank of Commerce v. Seattle*, 166 U. S. 463, the complaint alleged that there existed large amounts of taxable moneyed capital owned by resident citizens and invested in interest-bearing bonds and securities, and that all of said other moneyed capital referred to was all the moneyed capital in the city owned by resident individual citizens and invested in interest-bearing loans, discounts and securities. It was held that the omission from assessment of all such capital was not sufficient to make a tax on the shares of stock of a national bank invalid as an unlawful discrimination against the latter unless the moneyed capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with that of national banks. While in the instant case, it is shown by the tax assessment that there is a large amount of money and credits in the state and county, discrimination of the kind stated and in the manner pointed out in *Bank of Commerce v. Seattle* is not shown.

In the case last cited the Court observed: "We are still uninformed whether the moneyed capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with that of national banks," and that observation seems pertinent to the situation here presented.

V.

In *New York ex rel., Amoskeag Savings Bank v. Purdy*, 231 U. S. 373 at 392, the Court said that "the question whether an owner of national bank shares has been subjected to a state tax in excess of the limitations prescribed by Sec. 5219, Rev. St. (U. S. Comp. Stat. 1901, p. 3502) is a

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practical question to be determined by considering whether he is actually discriminated against in favor of other moneyed capital in the hands of individual citizens of the state," and the Court further said: "Moreover, we agree with what was said by the court of appeals of New York in the Feitner case (191 N. Y. 88, 96, 83 N. E. 592) that 'the state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality, or unfriendly discrimination is inflicted upon them.' The Court there took note of the fact that the flat rate of 1 per centum assessed upon national bank shares was more favorable to the relator than the general tax rate for the same year in the borough of Manhattan, where the banks were located. * * * As against the owner of bank shares who, by alleging discrimination, assumes the burden of proving it, and who fails to show that the method of valuation is unfavorable to him, it may be assumed to be advantageous."

It appears that the resources of the defendant for the year 1921, less investments in banking house furniture and fixtures, were \$46,015,545.92, and the year 1922 \$52,927,523.88. If taxed at a rate of three mills, the tax to be charged would have been for the year 1921, \$138,046.63, and for the year 1922, \$158,782.58 as compared with \$163,086.20, levied in 1921, and \$160,591.26, levied in 1922. Completing the comparison upon this basis with the years 1914 to 1920, inclusive, it is found that in the period from 1914 to 1919, the advantage would have been with the shareholders of the defendant bank, and that in the years 1920, 1921 and 1922, the disadvantage to the shareholders would not have been substantial in amount.

The citizen is taxed at three mills upon *all* his money and credits *without deduction of debts*. The shares of stock in the bank reflect in a great measure the *net* assets of the

bank, a deduction of the bank indebtedness from its money and credits.

Treating this matter as "a practical question (as it should be, as indicated in *New York ex rel. Amoskeag Savings Bank v. Purdy*, supra), the present method of taxation cannot be said to inflict any "injustice, inequality or unfriendly discrimination."

In *People v. Weaver*, 100 U. S. 539, the Court said: "This taxation, says the Act, shall not be at a greater rate than is assessed on other moneyed capital. What is it that shall not be greater? The answer is taxation."

"Looking at the fundamentals of the burden in actual tax results" the tax imposed upon the shares of the defendant is not greater than that imposed upon other moneyed capital. If the three mill tax rate upon money and credits were applied to national banks or to their shareholders in a manner equivalent to its operation upon individuals, the shareholders would be subject to no greater amount of tax than they are now compelled to pay.

VI.

1. The evidence shows that only a negligible part of the capital of defendant was invested in real estate mortgages. The defendant was not engaged in the purchase and sale of such securities, but the Northwestern Trust Company, its affiliated company, was engaged in that business and on the first day of May, 1921, it held real estate mortgages to an amount exceeding \$17,000,000.

2. On May 1, 1921, the total amount of all such mortgages held by all national banks of Ramsey county was \$339,000, and on May 1, 1922, \$377,000, and the amount of such loans made in Ramsey county between January 1, 1921, and April 30, 1922, (not including loans by savings banks and trust companies) aggregated \$13,089,491. The amount

of such loans made by individual citizens is not shown. Upon these facts, it cannot be found that there was a discrimination in favor of the competing moneyed capital of the individual citizen.

3. Through the 1907 mortgage tax law the legislature exercised its power to confer a partial exemption in the taxation of mortgages. As decided in *Hepburn v. School Directors*, 90 U. S. 480; *Adams v. Nashville*, 95 U. S. 19; *Mercantile Bank v. New York*, supra; *Bank v. Chehallis County*, 166 U. S. 442; *Bank of Commerce v. Seattle*, supra, the Act of Congress "was not intended to cut off the power to exempt particular kinds of property, if the Legislature chose to do so * * * these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares;" and in *Hepburn v. School Directors*, supra, the Court said that though, as shown in the case, mortgages and articles of agreement for the sale of real estate were partially exempted from taxes, this was not a discrimination against shares of national banks.

In the language of the Court:

"This is a partial exemption only. It was evidently intended to prevent a double burden by the taxation both of property and debts secured upon it. Necessarily there may be other moneyed capital in the locality than such as is exempt. If there is, moneyed capital, as such, is not exempt. Some part of it only is. It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

Both the mortgage and the money and credits laws by their terms create a partial exemption.

That there was a good and sufficient reason for special

methods in the taxation of mortgages and money and credits appears from the statements of our Supreme Court in *Mutual Benefit Life Ins. Co. v. County of Martin*, 104 Minn. 179-182, and *State v. Minnesota Tax Commission*, 117 Minn. 159, 160.

VII.

Section 5219, Rev. Stat. U. S., was amended by Act of Congress approved March 4, 1923. By the amendment, the states were given additional power as to the mode of taxation and were authorized to legalize, ratify or confirm any tax theretofore "paid, levied or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section." A legalizing statute was enacted by the Legislature and approved March 29, 1923.

"All that has ever been held to be necessary is that the system of state taxation of its own citizens, of its own banks, and of its own corporations shall not work a discrimination unfavorable to the holders of the shares of the national banks."

Davenport Bank v. Davenport, 123, U. S. 83.

The defendant has failed to establish that "moneyed capital" as the term is used in Sec. 5219, Rev. Stat., comes into competition with the business of national banks, thereby working "a discrimination unfavorable to the holders of the shares of the national banks."

BECHHOEFER, J.

(Title of Cause.)

NOTICE OF MOTION

TO AMEND AND ADD TO THE FINDINGS OF FACT AND
TO AMEND THE CONCLUSIONS OF LAW.

Please Take Notice that The First National Bank of St. Paul, the above named defendant, at a special term of said District Court to be held at the Court House in the City of St. Paul on the 18th day of October, 1924, at ten o'clock a. m., or as soon thereafter as said matter can be heard, will move the Court as follows:

I.

To amend Paragraph 3 of the Findings of Fact so that the same will read as follows:

"The value of the shares of stock of banks in the State of Minnesota organized under the national banking laws of the United States and the value of the moneyed capital of state banks and mortgage loan companies organized under the laws of Minnesota, for the years 1921 and 1922, was determined pursuant to the provisions of Chapter 416, laws of 1921, and the unrepealed parts of acts existing at the time of the enactment of the 1921 law. The taxing authorities, in determining the valuation of all such banks and companies for the years 1921 and 1922, applied the method theretofore applied for some years immediately prior to such determination which was the method provided by Sections 2017 and 2018, G. S. 1913; that is, the valuation was determined by taking the amount of the capital stock, the amount of the surplus, the amount of undivided profits, and other funds, and subtracting

therefrom the amount of legally authorized investments in real estate, and forty (40) per cent of the balance or remainder, was taken as the basis for valuation and the amount to be assessed."

II.

Strike out Finding 4 and in lieu thereof insert the following:

"The full and true value of the shares of the Capital Stock of the defendant for the year 1921, after deducting real estate, (but including bonds and securities of the United States Government amounting to \$3,453,665.06), was \$6,002,218.01 and said shares were assessed at forty (40) per cent of such full and true value, being \$2,400,887.20, which was taxed at a rate of 67 mills and the amount levied as taxes was \$160,859.54. The full and true value of the shares of the capital stock of the defendant for the year 1922, computed by including in assets bonds and securities of the United States Government, amounting to \$11,343,234.95 after deducting real estate as so determined was \$6,528,104.06 and said shares were assessed at forty (40) per cent of such full and true value, being \$2,611,240, which was taxed at a rate of 61½ mills and the amount levied as taxes was \$160,591.26."

III.

To add at the end of Paragraph 5 of the Findings of Fact the following:

"The said money and credits so listed and assessed for the years 1921 and 1922 in Ramsey county, as

shown by defendant's Exhibit G, consisted of the following items:

ITEMS	1921	1922
1. Money subject to check and on deposit in banks, trust companies, or similar financial institutions, where situate	\$9,117,749	\$9,341,138
2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments	745,030	1,053,650
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere	479,167	718,318
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness.....	7,265,200	6,825,425
5. Bonds, except United States Bonds and bonds issued by State of Minnesota or any		

municipality thereof and such as are secured by real estate mortgages recorded in this state	8,290,795	10,785,020
6. Real estate mortgages upon lands situate outside of this state, and amount secured thereby	2,072,790	1,989,760
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby	99,055	135,160
8. Chattel mortgages, upon personal property in this state or elsewhere, and the amount secured thereby....	1,649,369	1,374,835
9. Judgments in this state or elsewhere	200,740	615,995
10. Book accounts	36,772,916	34,617,422
11. Contracts for sale of real estate outside of this state....	391,400	328,945
12. Contracts for sale of real estate in this state which have not been recorded.....	598,830	444,885
13. Annuities, royalties, and all sums of money receivable at stated periods	72,650	82,150

14. All claims and demands for money or other valuable thing not above enumerated	105,800	173,700
15. Shares of stock in corporations, the property of which is not assessed or taxed in this state	8,773,620	8,180,240
Grand Total	<u>\$76,635,111</u>	<u>\$76,665,643</u>

These moneys and credits were apportioned between corporations and individuals, as shown by defendant's Ex. K, as follows:

Item No.	Corporations	Individuals
1.	\$ 5,100,329	\$ 4,017,420
2.	160,015	585,015
3.	442,790	36,377
4.	4,783,754	2,481,446
5.	694,820	7,595,975
6.	105,320	1,967,470
7.	5,400	93,655
8.	1,264,685	384,684
9.	192,500	8,240
10.	34,206,204	2,566,712
11.	57,120	334,280
12.	354,220	244,610
13.	000	72,650
14.	50,420	55,380
15.	4,046,920	4,726,700
Total	<u>\$51,464,497</u>	<u>\$25,170,614</u>

That the total amount of money and credits listed and assessed for taxation in the entire State of Minnesota for the year 1921 (\$422,745,839), and for the year 1922 (\$406,688,948), consisted of the following percentage for each item, namely:

No. 1	18.18 per cent.
No. 2	12.65 per cent.
No. 3	1.64 per cent.
No. 4	10.13 per cent.
No. 5	4.51 per cent.
No. 6	3.87 per cent.
No. 7	0.68 per cent.
No. 8	0.86 per cent.
No. 9	0.21 per cent.
No. 10	34.34 per cent.
No. 11	0.63 per cent.
No. 12	1.53 per cent.
No. 13	0.15 per cent.
No. 14	4.61 per cent.
No. 15	6.01 per cent.

and that Item No. 4 in said exhibits consisted almost entirely of unsecured promissory notes."

IV.

Strike out the following part of Paragraph 7 of the Findings of Fact:

"No material or substantial portion of the money and credits so listed and assessed consisted of moneyed capital in the hands of individual citizens of this state coming into competition with that of national banks or causing any inequality or discrimination in taxation

as against national banks or their shareholders generally."

and insert in place thereof the following, namely:

"That at the time of the assessment of said taxes for the years 1921 and 1922, large sums of money in the hands of individuals residing in said Ramsey County were invested by such individuals in unsecured promissory notes, and large sums of money were invested by individuals residing in said County, in the following securities, namely: Bonds (except United States Bonds and bonds issued by the State of Minnesota or any municipality thereof, and except bonds secured by real estate mortgages recorded in the State of Minnesota), and in real estate mortgages upon lands situate outside of this state, and in shares of stock in corporations the property of which is not assessed or taxed in the State of Minnesota, and the amount of such loans and investments actually made in said Ramsey County and State of Minnesota was greatly in excess in each instance of the amount so listed and returned for taxation, and that all of such loans and investments were in competition with the business of the defendant and other national banks within said county and state, and that at the time of the assessment of said taxes large sums of money in the hands of private individuals residing in said State of Minnesota outside of said City of St. Paul were loaned by such individuals on unsecured notes and large sums of money were invested in bonds, real estate mortgages and shares of stock of the character before described, and that all of such loans and investments were made in competition with the business of national banks located in said state."

V.

Strike out the last paragraph of Paragraph 8 of the Findings of Fact, namely:

"All of said trust companies were operated as adjuncts to their affiliated banks and as aids to the business of said banks."

VI.

Strike out Paragraph 9 of the Findings of Fact and insert in lieu thereof the following:

9. "In addition to money borrowed by them from banks, commercial houses in the State of Minnesota in the years 1921 and 1922 borrowed money through brokers, the amount being estimated in Ramsey County at \$15,000,000 per year and throughout the entire state at from \$40,000,000 to \$100,000,000 per year.

10. The investments and loans described in Paragraph 9 were in direct competition with the business of defendant and other national banks, and it appears that the loans made by these commercial houses from brokers, residents of Minnesota, greatly exceeded the loans made by them from national banks, due largely to the fact that a better rate of interest could often be secured from the broker than from the national bank. The loans made by brokers were not made through banks, but were direct and independent transactions between the broker and his customer, the broker disposing of the paper to banks and individuals."

VII.

Strike out Finding No. 10 and 11 and insert in lieu thereof:

11. "The laws of Minnesota relating to the taxation of national bank shares is unequal and not fair as to national banks and their shareholders, and do permit unfair and unjust discrimination in favor of competing moneyed capital in the hands of individual citizens of the state and do permit unjust and unfair discrimination in favor of state banks and other institutions competing with the business of national banks in said state."

VIII.

Add the following Findings of Fact, viz.:

a. The capital stock, surplus, undivided profits and all other funds, less authorized investments in real estate, of National banks in the State of Minnesota on the first day of May, 1921, taken by the tax officers of the state in determining the value of the shares of such national banks, was \$62,556,000, and upon said date said banks owned United States bonds and securities amounting to \$41,190,000, which were included in the aggregate value of the shares of said banks for the purpose of taxation. (Defendant's Exhibit "M.")

b. That on said May 1st, 1921, the total surplus, undivided profits, and other funds, less authorized investments in real estate, of national banks in Ramsey County, Minnesota, amounted to \$12,658,000, and upon said date said banks in said county owned United States bonds and securities amounting to \$11,148,000, which were included in determining the value of the shares of said banks for the purposes of taxation. (Defendant's Exhibit "M.")

c. That on said May 1st, 1921, the capital, surplus, undivided profits and other funds exclusive of authorized investments in real estate owned by cor-

porate banks in and organized under the laws of the State of Minnesota, amounted to \$32,017,597.55, of which the sum of \$13,369,840.32 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "C.")

d. That on said May 1st, 1921, the total, capital, surplus and undivided profits, less authorized investments in real estate, held by such state banks located in Ramsey County, Minnesota, amounted to the sum of \$1,840,540, of which the sum of \$1,763,018.41 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "S.")

e. The capital stock, surplus, undivided profits and all other funds, less authorized investments in real estate of national banks in the State of Minnesota on the first day of May, 1922, taken by the tax officers of the state in determining the value of the shares of such national banks was \$62,601,000, and upon said date said banks owned United States Bonds and Securities amounting to \$49,505,000, and which were included in determining the aggregate value of the shares of said banks for the purpose of taxation. (Defendant's Exhibit "M.")

f. That on said May 1st, 1922, the total surplus, undivided profits, and other funds, less authorized investments in real estate, of national banks in Ramsey County, Minnesota, amounted to \$12,891,000, and upon said date said banks in said County owned United States Bonds and Securities amounting to \$18,236,000, and which were included in determining the aggregate value of the shares of said banks for the purposes of taxation. (Defendant's Exhibit "M.")

g. That on said May 1st, 1922, the capital, surplus, undivided profits and other funds, less authorized investments in real estate owned by corporate banks in

and organized under the laws of the State of Minnesota, amounting to \$31,068,116.36, of which the sum of \$9,830,679.57 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "E.")

h. That on said May 1st, 1922, the total, capital, surplus and undivided profits, less authorized investments in real estate, owned by such state banks located in said Ramsey county Minnesota, amounted to the sum of \$1,615,915.19, of which the sum of \$1,290,477.06 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "S.")

i. That on said May 1st, 1921, the total capital, surplus and undivided profits of the defendant, including in the computation as assets Bonds and Securities of the United States Government in the sum of \$3,453,665.06 but excluding authorized investments in real estate, was \$6,002,218.01 and on May 1st, 1922, the total capital surplus and undivided profits of the defendant including in the computation as assets Bonds and Securities of the United States Government in the sum of \$11,343,234.95, but excluding authorized investments in real estate was \$6,528,104.06.

j. That trust companies are taxed pursuant to Section 2268 General Statutes of Minnesota for 1913. The aggregate capital stock of such companies organized under the laws of Minnesota not receiving deposits and paying a tax of 5% on gross earnings, was on May 1, 1921 and 1922, \$2,135,000. The result of such tax upon gross earnings is exemplified by the tax imposed upon Northwestern Trust Company. The tax for the year 1921 on the gross earnings of that company was \$13,832.22, while the tax for the same year, if imposed on its shares of stock at the rate and in the manner provided for taxing shares in National

banks, would have been at least \$30,000. (Defendant's Exhibit "J.")

k. The total loans secured by mortgages on real estate by national banks in the State of Minnesota on May 1st, 1921 was \$19,713,000, and upon May 1st, 1922, was \$25,409,000, the value of all said loans being included in the amount taken by the tax authorities of the State of Minnesota to determine the value of the shares of said national banks. (Defendant's Exhibit "N.")

l. The total loans secured by mortgages on real estate in the State of Minnesota made during the year 1921 amounted to at least \$184,560,000; and to a larger sum in the year 1922.

m. That of the mortgage loans so made in Ramsey county during the year 1921, loans to the sum of at least \$6,000,000 were made by individual citizens of Ramsey county, and in the year 1922 such mortgage loans to the amount of at least \$6,000,000 were made by individual citizens of Ramsey county.

n. That the only tax paid upon any of said mortgages held by individuals was the tax, provided by Section 2302 General Statutes 1913 as amended by Chapter 73, Laws of 1917, and Chapter 445 Laws of 1921, of fifteen cents upon each one hundred dollars or fraction thereof of the principal when the loan matures within five years and sixty days from its date, and twenty-five cents for each one hundred dollars when the loan matures at a later date.

o. During the years 1921 and 1922 many of the commercial houses and jobbers in said City of St. Paul borrowed large sums of money from their employes and officers, and such loans, by commercial houses, who were the customers of defendant bank, for each of said years amounted to approximately \$1,500,000.

IX.

To amend the Conclusions of Law by striking out the words "together with interest," and further amend the same so that said Conclusions will read as follows:

"The Court finds that the State is not entitled to judgment against the defendant for the amount claimed as taxes for the years 1921 and 1922, as above recited, or in any other amount, and that the attempted levy, assessment and extension of the tax for each of said years be canceled, annulled and set aside, and that the State take nothing by this action, and that defendant have judgment for its costs and disbursements herein."

X.

The grounds for the foregoing motion will be that the Findings of Fact and Conclusions of Law as filed are not justified by the evidence and are contrary to law, and that the amended and additional findings of fact and conclusions of law herein proposed are warranted, justified and required by the evidence, and that the defendant is entitled to have such amended and additional finding of fact and conclusions of law as a matter of right and law.

Dated October 7th, 1924.

O'BRIEN, HORN & STRINGER,
Attorneys for Defendant,
1116 Pioneer Building,
St. Paul, Minnesota.

To H. H. Peterson, Esquire, County Attorney, and Rollin L. Smith and Patrick J. Ryan, Attorneys for Plaintiff.

(Title of Cause.)

ORDER.

The above entitled actions came on for hearing at a special term of this court on the 25th day of October, 1924, upon the motion of defendant for amendment of the Findings of Fact and Conclusions of Law herein in the manner and as specified in the notice of motion. Plaintiff appeared by its attorneys H. H. Peterson, County Attorney, Rollin L. Smith and Patrick J. Ryan, and the defendant by its attorneys O'Brien, Horn & Stringer.

After hearing counsel and upon due consideration, it is Ordered, that the motion of the defendant be and the same is in all things denied.

Dated October 30, 1924.

CHARLES BECHHOEFER,
District Judge.

MEMORANDUM.

In Paragraph 2 of Subdivision VI of the memorandum accompanying the findings, it is stated that the amount of Mortgage Loans made in Ramsey County by individual citizens is not shown. In making this statement the Court inadvertently overlooked certain testimony bearing upon the question (P. 118 and 119 of the Record) now brought to its attention by defendant's counsel.

An accurate statement of this testimony so far as it relates to the question is that the amount remaining unsatisfied of mortgages recorded during the year 1921 in Ramsey county upon real estate owned by residents of that county was \$9,889,047

The amount of such mortgages owned by residents of Ramsey county was	\$6,351,105
and the amount owned by corporations was....	3,537,942
	<hr/>
	\$9,889,047

The amount of such mortgages recorded from January 1, 1922, to April 30, 1922, unsatisfied on the last named date and owned by residents of Ramsey county was	2,204,351
and for the period last mentioned, the aggregate amount of such mortgages and remaining unsatisfied on April 30, 1922, owned by Minnesota corporations, except savings banks and trust companies was	996,113
	<hr/>
	\$13,089,511

(Testimony shows a total of	\$13,089,491)
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Of this total, \$1,019,569 were purchase money mortgages.

BECHHOEFER, J.

(Title of Cause.)

NOTICE OF MOTION FOR NEW TRIAL.

You are hereby notified that the above named defendant, The First National Bank of St. Paul, Minnesota, hereby moves for a new trial of the above entitled actions on the grounds:

I.

That the decision is not justified by the evidence and is contrary to law.

II.

That the Findings of Fact are not justified by the evidence produced at the trial of said actions, but are contrary thereto.

III.

That the Conclusions of Law are not justified by the evidence and are not justified by the Findings of Fact.

IV.

That the Court erred in finding, as a matter of fact, that on the 1st day of May, 1921, and again on the 1st day of May, 1922, no material or substantial portion of the money and credits listed and assessed for taxation consisted of moneyed capital in the hands of individual citizens of the State of Minnesota, coming into competition with national banks or causing any inequality or discrimination in taxation as against National Banks or their shareholders.

V.

The Court erred in failing and refusing to grant defendant's motion and request to amend the findings of fact and conclusions of law and for additional findings as the same appear in defendant's motion dated October 7th, 1924, and in refusing to grant said motion in each of the following particulars, to-wit:

- (a) To amend paragraph three of said Findings.
- (b) To amend paragraph four of said Findings.
- (c) To amend paragraph five of said Findings.
- (d) To amend paragraph seven of said Findings.

- (e) To amend paragraph eight of said Findings.
- (f) To amend paragraph nine of said Findings.
- (g) To amend paragraphs ten and eleven of said Findings.
- (h) To add to said Findings the findings of fact described in paragraph eight of said motion and to find as specified in each of said requested additional findings.
- (i) To amend the Conclusions of Law as specified in said motion.

You are further notified that said motion will be brought on for hearing before the above entitled Court at a Special Term thereof to be held at the District Court House in the City of St. Paul, Ramsey county, Minnesota, on Saturday, the 1st day of November, 1924, at the opening of Court on that day or as soon thereafter as said matter can be heard, and will be based upon the pleadings, settled case and all the files and proceedings in said actions.

Respectfully,

O'BRIEN, HORN & STRINGER,

Attorneys for Defendant,
1116 Pioneer Building,
St. Paul Minnesota.

To the State of Minnesota, and to Messrs, Harry H. Peterson, Rollin L. Smith and Patrick J. Ryan.

(Title of Cause.)

ORDER DENYING MOTION FOR NEW TRIAL.

The motion for a new trial of the above entitled actions came on to be heard pursuant to due notice, November 1st, 1924, H. H. Peterson, Esquire, appearing on behalf of the plaintiff, and Messrs. O'Brien, Horn & Stringer appearing on behalf of the defendant.

Having duly considered said motion, it is

Ordered, that said motion for a new trial be, and the same is hereby in all things denied.

That proceedings in these actions be stayed for twenty days.

Dated this 1st day of November, 1924.

CHARLES BECHHOEFER,
District Judge.

(Title of Cause.)

NOTICE OF APPEAL TO SUPREME COURT.

To H. H. Peterson, Esq., County Attorney, and Messrs. Rollin L. Smith and Patrick J. Ryan, Attorneys for the above named plaintiff, and to N. C. Robinson, Clerk of said District Court:

Please take notice, that the above named defendant, The First National Bank of St. Paul, Minnesota, appeals to the Supreme Court of the State of Minnesota, from the order of the said District Court entered herein on the 1st day of November, A. D. 1924, denying defendant's motion for a new trial in the actions or proceedings above entitled, and from the whole thereof.

Dated this 5th day of November, A. D. 1924.

O'BRIEN, HORN & STRINGER,
Attorneys for Defendant,
1116 Pioneer Building,
St. Paul, Minnesota.

DECISION OF THE SUPREME COURT OF THE
STATE OF MINNESOTA

No. 183

RAMSEY COUNTY

Taylor, C.

THE STATE OF MINNESOTA,*Respondent,*

24553

VS.

FIRST NATIONAL BANK OF ST. PAUL,

Appellant.

Endorsed

Filed July 17th, 1925.

GRACE F. KAERCHER, Clerk.

SYLLABUS

1. The shares of national banks can be taxed by the States only in the manner and to the extent authorized by section 5219 U. S. Revised Statutes, and the construction given to that statute by the federal courts is binding on the State courts.

2. Under that statute such shares cannot be taxed at a greater rate than moneyed capital in the hands of individual citizens employed in competition with such banks.

3. Interest-bearing demands against persons or corporations and money loaned or invested in securities, including personal investments of surplus funds, are deemed moneyed capital employed in competition with such banks.

4. Large amounts of such moneyed capital so employed are held by individuals, and are taxed under the money and

credits act at the rate of 3 mills on the dollar, while the shares of defendant are taxed at several times that rate. This is a discrimination forbidden by the statute, although the purpose in taxing such capital at such a low rate was to increase the revenue therefrom.

5. The tax on national bank shares is against the holders thereof, not against the bank, and the holders cannot deduct their liabilities in fixing the taxable value of the shares.

6. Taxing the shares of national banks against the holders, and the moneyed capital of State banks against the banks, thus allowing State banks to deduct their tax exempt securities in fixing the taxable value of such moneyed capital is permissible under the federal statute.

7. The act of March 3, 1923, amending section 5219 U. S. Revised Statutes does not legalize invalid taxes theretofore levied, but authorizes the State to collect such taxes to the extent that they would be valid under the prior law.

Reversed.

OPINION

The State brought these proceedings to obtain judgment against defendant, a national bank located in the City of St. Paul in the County of Ramsey, for the personal property taxes assessed against its shareholders for the years 1921 and 1922. The proceedings were separate for each year but involve the same questions and were tried together by consent. Defendant interposed answers asserting that the taxes were illegal and void for the reason that its shares were taxed at a rate largely exceeding the rate at which

money capital in the hands of individual citizens employed in competition with national banks was taxed. The trial court made extended findings and directed judgment for the State. Defendant appealed from an order denying a new trial. The facts are undisputed and the controversy is in respect to the conclusions to be drawn therefrom.

National banks being organized under the laws of the United States as instrumentalities of the national government, the State cannot tax them or their shares except as authorized by Congress. *Des Moines National Bank v. Fairweather*, 263 U. S. 103, 68 L. Ed. 191 and cases cited. The State cannot tax such banks directly for Congress has never given authority to do so, and in the years 1921 and 1922 it could tax the shares of such banks only as authorized by sections 5219 U. S. Revised Statutes, which reads:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to two restrictions, that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of said State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in a city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt real property of associations from either State, county or municipal taxes to the same extent, according to its value, as other real property is taxed."

This section was amended by the act of March 4, 1923, 42 Stat. 1499, also found in 6 Fed. Stat. Ann., 1923 Supp.,

at page 84, and the amendment applies to taxes for the years subsequent to 1922.

Section 5219 grants power to the State to tax the shares of national banks to the holders thereof subject to the two restrictions named. Defendant contends that the tax upon such shares, as assessed under chapter 416 Laws of 1921 of the State of Minnesota, violates the requirement that,

“the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State.”

Chapter 416, Laws of 1921, appears as sections 2023, 2024, 2025 and 2026 of the General Statutes of 1923. Section 2023 provides:

“The shares of stock of every bank in this State organized under the laws of the United States, and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof.”

Section 2024 provides that the shares of stock of national banks shall be taxed against the holders thereof but in the name of the bank and that such taxes shall be paid by the bank as agent of the stockholders. It also provides that “the moneyed capital” of State banks and mortgage loan companies shall be taxed against the bank or loan company, and that the tax shall be paid by the bank or loan company. Section 2025 provides that the basis for determining the taxable value of the shares of stock of banks organized under the laws of the United States and the moneyed capital of banks and mortgage loan companies organized under the laws of this State shall be determined by deducting the amount of authorized investments in real estate from the aggregate amount of the capital, surplus, undivided profits and other funds of such bank or loan company.

The statute, (G. S. 1913 § 2316), provides that money and credits shall be taxed at the rate of 3 mills on the dollar

of the fair cash value thereof and shall be exempt from all other taxation; but further provides that this provision shall not apply to money and credits belonging to incorporated banks, nor to indebtedness on which a tax is paid under sections 2301 to 2309 of the General Statutes of 1913. These sections impose a tax of fifteen cents on each one hundred dollars of debts secured by real estate mortgages where the debt matures not later than five years from the date of the mortgage, and a tax of twenty-five cents on each hundred dollars where the debt matures more than five years after the date of the mortgage. The mortgage cannot be recorded nor used as evidence until this tax is paid, and payment of it exempts the debt from all other taxes, except inheritance taxes. The term "mortgage", as used here, includes executory contracts for the sale of land where the vendee takes possession thereof and every instrument evidencing a lien of any kind on real estate as security for a debt. The statute, (G. S. 1923 § 1975), defines money as including gold and silver coin and all forms of currency in common use and all deposits subject to withdrawal in money on demand; and defines credits as including every claim and demand for money or other valuable thing.

As the States have no power to tax national banks or the shares therein except as granted to them by Congress, the construction given by the Supreme Court of the United States to the act granting such power and defining its limits is binding and conclusive upon the State courts. It is settled by the decisions of that court that the term, "money capital in the hands of individual citizens," as used in section 5219, intends only the moneyed capital in the hands of individuals which is employed in competition with national banks. The various uses of moneyed capital which bring it within the statute have been plainly indicated in the numerous cases which have considered that question. In *Mercantile National Bank v. Mayor etc. of New York*,

121 U. S. 138, 30 L. Ed. 895, the court reviewed the prior decisions and pointed out the uses of capital which would be deemed to be in competition with the banks. In the later case of *Merchants' National Bank v. Richmond*, 256 U. S. 635, 65 L. Ed. 1135, this question was again considered and the court said:

“By repeated decisions of this court, dealing with the restriction here imposed, it has become established that while the words ‘moneyed capital in the hands of individual citizens’ do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking. In *Evansville Nat. Bank v. Britton*, 105 U. S. 322, 324, 26 L. Ed. 1053, 1054, the court said: ‘The act of Congress does not make the tax on personal property the measure of the tax on bank shares in the State, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations, (640) are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital. But the rights, credits, demands, and money at interest mentioned in the Indiana statute, from which bona fide debts may be deducted, all mean moneyed capital invested in that way . . . We are of opinion that the taxation of bank shares by the Indiana statute, without permitting the shareholder to deduct from their assessed value the amount of his bona fide indebtedness,

as in the case of other investments of moneyed capital, is a discrimination forbidden by the act of Congress.'

And in *Mercantile Nat. Bank v. New York*, 121 U. S. 138, 30 L. Ed. 895, 7 Sup. Ct. Rep. 826, the court speaking by Mr. Justice Matthews, after reviewing previous decisions and pointing out (p. 154) the policy and purpose of the act as the key to its proper interpretation, proceeded to declare (p. 157): 'The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by the way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily, with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property.' Proceeding then to quote the passage we have cited from *Evansville Nat. Bank v. Britton*, *supra*.

(641) In *Amoskeag Sav. Bank v. Purdy*, 231 U. S. 373, 390, 391, 58 L. Ed. 274, 281, 282, 34 Sup. Ct. Rep. 114, the above mentioned declaration of the court in *Mercantile Nat. Bank v. New York*, 121 U. S. 138, 157, 30 L. Ed. 895, 902, 7 Sup. Ct. Rep. 826, including the citation from *Evansville Nat. Bank v. Britton*, was repeated, and it was pointed out that the rule of construction thus laid down had since been consistently adhered to. No decision of this court to which our attention is called has qualified that rule, or construed ¶5219 as leaving out of consideration the rate of state taxation imposed upon moneyed capital in the hands of individual citizens, invested in loans or securities for the payment of money, either for permanent or tempor-

any purposes, where such moneyed capital comes into competition with that of the national banks."

As we understand these decisions, credits in the form of interest-bearing demands and money invested in loans or securities, whether such investments are of a permanent character or for a temporary purpose, and also shares of stock held by individuals in corporations the business of which is the making of profit by using their capital as money, that is, by loaning it at interest or investing it in interest-bearing securities, are deemed moneyed capital used in competition with national banks within the meaning of section 5219.

The court found that the assessed value of the shares of stock of defendant in each of the years 1921 and 1922 slightly exceeded \$6,000,000, of which forty per centum was taken as the basis for taxation, and that the assessed value of money and credits in each of those years exceeded \$100,000,000 in the State and \$83,000,000 in Ramsey County. The court further found that the assessed value of money and credits in the City of St. Paul in each of those years exceeded \$76,000,000, of which approximately two-thirds was held by corporations and one-third by individuals.

The court further found:

"No material or substantial portion of the money and credits so listed and assessed consisted of moneyed capital in the hands of individual citizens of this State coming into competition with that of national banks or causing any inequality or discrimination in taxation as against national banks or their shareholders generally."

Defendant attacks this finding as not warranted by the evidence.

In the year 1921, the shares of stock in defendant bank

were taxed at the rate of 67 mills on the dollar on forty per centum of their value, equivalent to 26.8 mills on their full value. In the year 1922, they were taxed at the rate of 61.5 mills on forty per centum of their value, equivalent to 24.6 mills on their full value. Money and credits were taxed in those years at 3 mills on the dollar of their value. The rate of taxation upon the shares of the bank was several times the rate of taxation upon moneyed capital in the hands of individuals, and was clearly a discrimination forbidden by the federal statute unless we can say that it ^{1.} does not appear that any substantial part of such moneyed capital was used in competition with national banks.

Numerous tables are in evidence showing the nature and the amounts of the investments held by national banks, by State banks, by other corporations, and by individuals. These tables were prepared mainly, if not entirely, from official records, and their correctness is conceded. They are too voluminous to be summarized within any reasonable space. Some cover the entire State, some Ramsey County only.

Money and credits are listed for taxation under fifteen items, of which No. 4 is promissory notes, No. 5 is bonds exclusive of tax-exempt bonds and bonds secured by real estate mortgages on Minnesota land, and No. 10 is book accounts. The amount of these three items assessed in the County of Ramsey for the year 1921 was as follows: promissory notes held by corporations \$4,783,754, held by individuals \$2,481,446; bonds held by corporations \$694,820, held by individuals \$7,595,975; book accounts held by corporations \$34,206,204, held by individuals \$2,566,712. The amount of the same items assessed in Ramsey County for the year 1922 was as follows: promissory notes held by corporations \$5,176,615, held by individuals \$1,648,810; bonds held by corporations \$853,065, held by individuals \$9,931,955; book accounts held by corporations \$32,115,187,

held by individuals \$2,502,235. Of course, the amount of these items held in the State is many times these sums. Defendant contends that these items, and also other items assessed as credits and aggregating large amounts, represent moneyed capital employed in competition with national banks. Plaintiff claims that the record does not require a finding that the funds invested in these credits come into competition with national banks within the meaning of section 5219. "The court is required to take judicial notice of the general conditions to which the law applies"; and defendant insists that the taxing laws, construed in the light of conditions generally known, show upon their face that they create a discrimination against national banks not permitted by the federal act. Although there is force in this contention, the present case does not rest upon it. It appears from the undisputed testimony drawn out by plaintiff that nearly all the above mentioned bonds held by individuals represent investments made by such individuals out of their surplus funds. The county assessor of Ramsey County, from whom this fact was elicited, was unable to state the character of the transactions which resulted in the promissory notes and book accounts held by individuals. Plaintiff urges that personal investments of surplus funds should not be deemed to have been made in competition with the banks, and that only a comparatively small part of promissory notes and book accounts is held by individuals. Surplus funds are moneyed capital; and the federal courts, if we understand their decisions correctly, have repeatedly held that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities, whether as permanent personal investments or for temporary purposes, brings them in competition with national banks within the meaning of section 5219 as it stood prior to the amendment of 1923.

Plaintiff also insists that the tax on national banks shares

is no greater in fact than the tax on credits. The argument advanced in support of this claim is that individuals are taxed at the rate of 3 mills on the dollar upon the full value of their credits without deducting their liabilities, and that, if banks were taxed at the same rate upon their resources without deducting their liabilities, the amount of the tax would be approximately the same as under the present law. Probably true. But the tax is not against the bank, but against the shareholders as individuals. They are taxed as individuals upon the full value of the item of property represented by their shares. They are allowed no deduction from such full value on account of their liabilities. In this particular the statute applies the same rule to them that it applies to those taxed under the money and credits act. See *Des Moines National Bank v. Fairweather*, 263 U. S. 103, 68 L. Ed. 191.

Plaintiff also contends that the tax imposed by the money and credits act does not discriminate against national banks within the meaning of the federal act for the reason that it was adopted for the purpose of increasing the revenue from such property and not for the purpose of favoring it as against the banks. We have no doubt that such was the purpose and that the act has resulted in a material increase of revenue from that source. It is a notorious fact, admitted everywhere, that the attempt to tax intangible personal property on the same basis as other property is, and always has been, a practical failure; that under such laws the great body of such property escapes taxation entirely for the reason that the holders will not report it and the assessors are unable to find it. Wisconsin recognizing that the former method of taxing personal property was a failure, sought to solve the problem of enforcing a tax against it, and also of complying with the requirements of section 5219, by taxing the shares of national banks and of all State concerns doing a business in the nature of bank-

ing on the basis of value, and by taxing all other personal property on the basis of income. The Wisconsin court, by a four to three decision rendered in April of this year, has sustained the validity of the tax imposed on the shares of national banks under this law. *First National Bank v. City of Hartford*, 203 N. W. 721. Plaintiff cites that case as authority for sustaining the tax imposed by our law; but the Wisconsin law differs so radically from the Minnesota law that the questions there presented for solution were not the same as those presented here. The Wisconsin court held, in effect, that under their law substantially all business operated in competition with national banks is required to operate under the State banking law and is subject to the same tax as the shares of national banks. As illustrative of the broad inclusive character of their banking act, the court notes that a department store which received deposits withdrawable on demand, on which it allowed interest and against which it charged purchases made by the depositors, came within the act; and that industries which sought to promote thrift by arranging to receive deposits from employes also came within the act. The court states that its conclusion that the tax is valid does not,

“in any manner rest upon the argument that the income tax is an equivalent or substitute for the ad valorem tax levied upon the stock of national banking associations”,

and adds that in that respect it agrees with the conclusion of the New York court in *People ex. rel. v. Goldfogle*, 234 N. Y. 345. In the New York case the law imposed a tax of one per centum on the book value of the shares of stock in all banks and banking associations; and an income tax on all residents of the State in lieu of other taxes on their intangible personal property which term included money, credits,

bonds, notes and evidences of debt. The New York court held the tax on national bank shares void on the ground that the income tax did not impose an equal burden on moneyed capital of individuals.

Several decisions of the Iowa court are called to our attention. The Iowa statute provides that the shares of national, State and savings banks, and of loan and trust companies shall be taxed at the same rate as other property on twenty per centum of their actual value; that all moneyed capital within the meaning of section 5219 of the U. S. Revised Statutes shall be taxed in the same manner and at the same rate; and that all other moneys and credits shall be taxed at the flat rate of 5 mills on the dollar of their actual value. The Statute has been held valid, and the questions considered in the cases cited are mainly whether the facts in a particular case show that moneyed capital within the meaning of section 5219 is, in fact, not taxed as such but at the flat rate. The gist of these cases is that investments in real estate mortgages do not come within the meaning of that section. *First Nat. Bank v. Anderson*, 196 Ia. 587, 192 N. W. 6; *First Nat. Bank v. Board of Review*, 201 N. W. 769; *Citizens Nat. Bank v. Johnson*, 202 N. W. 382.

The Nebraska act of 1921 provided that tangible property should be taxed at the full rate of the levy upon its true value; that intangible property, with certain exceptions, should be taxed at one-fourth of that rate on its full value; and that the shares of banks, banking associations, loan and trust, or investment companies should be taxed at the same rate as tangible property on their full value. The court held that under the rule announced in *Merchants' Nat. Bank v. Richmond*, *Supra*, the statute, as applied to national banks, was clearly invalid. *State Bank v. Endres*, 109 Neb. 753, 192 N. W. 322; *Central National Bank v. Sutherland*, 202 N. W. 428.

In *Eddy v. First National Bank*, 275 Fed. 550, involving the North Dakota law then in force, the circuit court of appeals of this circuit held that taxing the shares of the bank at 35.3 mills on the dollar, while money invested in interest-bearing notes, bonds and securities was taxed at 3 mills, was a discrimination forbidden by section 5219, although the reason for taxing money and credits at the 3 mill rate was because the attempt to tax them as other property had proven a failure.

In *Minnehaha National Bank v. Anderson*, 2 Fed. (2d) 897, bank shares were taxed at 34.93 mills under the South Dakota law while money and credits were taxed at 3 mills. In an opinion in which the questions presented and the authorities bearing thereon were carefully considered, the district court of the United States held the tax against national bank shares void. In the course of the opinion it is said, in substance, that loaning money on real estate and buying notes and bonds is an important and legitimate part of the banking business; that the bank was engaged in making real estate loans and disposing of them for the accrued interest and commissions; and that parties engaged in making such loans were in competition with the bank.

In *State ex rel. v. Wallace*, 48 N. D. 803, 187 N. W. 728, the North Dakota court construed their money and credits act then in force as applying to the stock of national banks, saying that if the legislature intended,

“to continue taxing such stock at the local rate of levy, the statute would be unconstitutional as taxing the stock of national banks beyond the authority granted.”

In *First National Bank v. Eddy*, 197 N. W. 290, the South Dakota court held that the statute taxing national bank shares at the same rate as real and personal property, while under the money and credits act other moneyed capi-

tal in the hands of individuals employed for investment, loan and discount was taxed at only 3 mills, created an unlawful discrimination within the meaning of section 5219.

It is perhaps not necessary to add that the positive limitation placed by the federal statute on the power granted to the States puts it beyond the power of the State to impose a higher rate of taxation upon such shares than it imposes upon moneyed capital in the hands of its citizens, although it imposes a low rate on such capital for the purpose of increasing the revenue therefrom.

Defendant also insists that capital invested in real estate mortgages, aggregating many millions of dollars, must be considered as competing capital for the reason that since the act of December 23, 1913, (38 Stat. 273), national banks have been authorized to invest a part of their funds in such mortgages, and the national banks of Minnesota had \$19,000,000 invested therein in 1921 and \$25,000,000 in 1922. Failure to tax mortgages at the same rate as bank shares was not a forbidden discrimination prior to this act. *Hepburn v. School Directors*, 90 U. S. 480, 23 L. Ed. 112; *Adams v. Nashville*, 96 U. S. 19, 24 L. Ed. 369; *Merchants National Bank v. Mayor etc.*, 121 U. S. 138, 30 L. Ed. 895. Whether this act operated to change the former rule has not been passed upon by the United States Supreme Court so far as we are advised. Other decisions are conflicting. It is not necessary to determine the question here.

Defendant also insists that, although chapter 416 provides the same method for determining the value of the shares of national banks and the value of the moneyed capital of State banks, it discriminates in favor of State banks. This claim is based on the fact that in the case of State banks the tax is against the bank, not against the shareholders, and the bank is permitted to deduct its tax-exempt securities from the value of its property in fixing the amount subject to taxation, while in the case of national

banks the tax is against the shareholders, not against the bank, and tax-exempt securities are not deducted in fixing the value of such shares. We think that the method adopted is permissible under the doctrine of *People v. Commissioners of Taxes*, 71 U. S. (4 Wall.) 244, 18 L. Ed. 344; *Mercantile Nat. Bank v. Mayor, etc.*, 121 U. S. 138, 30 L. Ed. 895; and *Des Moines Nat. Bank v. Fairweather*, 263 U. S. 103, 68 L. Ed. 191.

A few additional facts should properly be mentioned. Note brokers handle the commercial paper of manufacturers, wholesalers, and jobbers in an amount exceeding \$100,000,000 per year. These brokers make loans to their customers and then sell the paper to banks and other investors. The larger part of it is placed in the east. The amount sold to individuals in Minnesota or retained by the brokers themselves does not appear, but would doubtless aggregate a considerable sum. A large amount of paper known as cattle loan paper is handled in Minnesota. Three of the larger companies dealing in such paper sold over \$22,000,000 of it in 1921 and 1922, of which over \$13,000,000 was sold to banks, corporations, firms and individuals in Minnesota. The amount shown to have been sold to individuals in Minnesota was slightly less than \$1,000,000. Eleven business concerns to whom defendant loaned money had loans from their own officers and employees aggregating nearly \$1,500,000. The total amount of such loans in either Ramsey County or the State is not shown.

Several witnesses called by defendant testified that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. The only witness called by plaintiff testified briefly that in his opinion there would be some competition

in some of the items among which he included book accounts, but that there would be little or no competition in other items as they did not represent a class of loans or credits in which the banks were dealing.

The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce.

The act of March 3, 1923, (42 Stat. 1499) made several changes in section 5219. To the provision that national banks' shares shall not be taxed at a greater rate than other moneyed capital in the hands of individuals, it added the following:

"Provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

It further provides in subdivision 4:

"The provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collection thereof, to the extent that such tax would be valid under said section."

Plaintiff calls our attention to *McFarland v. Georgetown National Bank*, 270 S. W. 995, in which the Kentucky court construed the provision last quoted as legalizing prior taxes which would be valid under section 5219 as amended by the proviso above quoted, but were invalid under that section as it stood when the tax was levied. We are unable to concur in this construction.

In *Minnehaha Nat. Bank v. Anderson*, 2 Fed. (2d), 897, the court said:

“This amendment is not retroactive. The last provision, subdivision 4, conclusively determines that it was not intended to be retroactive Congress, however, by this amendment provided in effect, as I construe it that the State of South Dakota might pass a curative act, subjecting complainant to the tax of 3 mills, the same as other moneys named in section 5219, Rev. Stat. U. S. The State of South Dakota was thereby given the power, without conflicting with this statute, to confirm or ratify any tax theretofore levied upon the complainant to the extent of 3 mills, the amount that would be valid under the construction given section 5219, as theretofore in force.”

We think the federal judge points out the purpose of this provision, and that it authorizes the State to provide for the collection of an invalid tax theretofore levied to the extent that such tax would be valid under section 5219 as that section existed at the time it was levied.

The order appealed from is reversed.

Stone, J. took no part.

STATE OF MINNESOTA, COUNTY OF RAMSEY.

District Court, Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff.

vs.

FIRST NATIONAL BANK OF ST. PAUL,

Defendant.

IN RE: Delinquent Personal Property

Tax for the year 1921,

File No. 146,399.

IN RE: Delinquent Personal Property

Tax for the year 1922,

File No. 152,054.

The above actions came on for trial on the 29th day of September, 1925. H. H. Peterson, County Attorney, R. A. McDonald, Assistant County Attorney, Clifford L. Hilton and Patrick J. Ryan appeared for the plaintiff, and

O'Brien, Horn & Stringer appeared for the defendant—the parties to said actions having by stipulation on file herein agreed that both of said actions be submitted to this court for decision without argument upon the printed record and the briefs of said parties in said actions on file with the Clerk of the Supreme Court of the State of Minnesota, the said printed record consisting of Volumes 1 and 2 is attached to and made a part of said stipulation.

Upon consideration of the testimony and the arguments of counsel, the court finds as

FACTS

I.

The defendant is and during the times named in the answers, has been a national banking association, duly organized and existing under and pursuant to the national banking laws of the United States of America, and having its principal office in the City of St. Paul, County of Ramsey and State of Minnesota.

II.

As such corporation said bank is an instrumentality of the United States of America, and there can be no taxation of the defendant, or its property or the shares of its capital stock by or under the authority of the State of Minnesota, or any political subdivision thereof, otherwise than in conformity with the terms and restrictions embodied in the assent given by Congress, as set forth in Section 5219, Revised Statutes of the United States, reading as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the Association is located; but the legislature of each state may determine and direct the

manner and place of taxing all the shares of national banking associations located within the state, subject only to two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in such city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt real property of associations from either state, county or municipal taxes to the same extent, according to its value, as other real property is taxed."

III.

Th value of the shares of stock of banks in the State of Minnesota organized under the national banking laws of the United States and the value of the moneyed capital of state banks and mortgage loan companies organized under the laws of Minnesota, for the years 1921 and 1922, was determined pursuant to the provisions of Chapter 416, laws of 1921, and the unrepealed parts of Acts existing at the time of the enactment of the 1921 law. The taxing authorities, in determining the valuation of all such banks and companies for the years 1921 and 1922, applied the method theretofore applied for some years immediately prior to such determination which was the method provided by Sections 2017 and 2018, G. S. 1913; that is, the valuation was

determined by taking the amount of the capital stock, the amount of the surplus, the amount of undivided profits and other funds, and subtracting therefrom the amount of legally authorized investments in real estate, and forty (40) per cent of the balance or remainder, was taken as the basis for valuation and the amount to be assessed, and no deduction was claimed or made on account of bonds held by any such bank.

IV.

The capital stock, surplus, undivided profits and all other funds, less authorized investments in real estate of national banks in the State of Minnesota on the first day of May 1921, taken by the tax officers of the state in determining the value of the shares of such national banks, was \$62,556,000, and upon said date said banks owned United States bonds and securities amounting to \$41,190,000, which were included in the aggregate value of the shares of said banks for the purpose of taxation. (Defendant's Exhibit "M").

That on said May 1st, 1921, the total surplus, undivided profits, and other funds, less authorized investments in real estate, of national banks in Ramsey County, Minnesota, amounted to \$12,658,000, and upon said date said banks in said county owned United States bonds and securities amounting to \$11,148,000, which were included in determining the value of the shares of said banks for the purposes of taxation. (Defendant's Exhibit "M").

That on said May 1st, 1921, the capital, surplus, undivided profits and other funds exclusive of authorized investments in real estate owned by corporate banks in and organ-

ized under the laws of the State of Minnesota, amounted to \$32,017,597.55, of which the sum of \$13,369,840.32 consisted of United States Government Bonds and Securities. Defendant's Exhibit "C").

That on said May 1st, 1921, the total, capital, surplus and undivided profits, less authorized investments in real estate, held by such state banks located in Ramsey County, Minnesota, amounted to the sum of \$1,840,540, of which the sum of \$1,763,018.41 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "S").

The capital stock, surplus, undivided profits and all other funds, less authorized investments in real estate of national banks in the State of Minnesota on the first day of May, 1922, taken by the tax officers of the state in determining the value of the shares of such national banks was \$62,601,000, and upon said date said banks owned United States Bonds and Securities amounting to \$49,505,000, and which were included in determining the aggregate value of the shares of said banks for the purpose of taxation. (Defendant's Exhibit "M").

That on said May 1st, 1922, the total surplus, undivided profits, and other funds, less authorized investments in real estate, of national banks in Ramsey County, Minnesota, amounted to \$12,891,000, and upon said date said banks in said County owned United States Bonds and Securities amounting to \$18,236,000, and which were included in determining the aggregate value of the shares of said banks for the purpose of taxation. (Defendant's Exhibit "M").

That on said May 1st, 1922, the capital, surplus, undivided profits and other funds, less authorized investments in real

estate owned by corporate banks in and organized under the laws of the State of Minnesota, amounted to \$31,068,116.36, of which the sum of \$9,830,679.57 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "E").

That on said May 1st, 1922, the total, capital, surplus and undivided profits, less authorized investments in real estate, owned by such state banks located in said Ramsey County, Minnesota, amounted to the sum of \$1,615,915.19, of which the sum of \$1,290,477.06 consisted of United States Government Bonds and Securities. (Defendant's Exhibit "S").

That on said May 1st, 1921, the total capital, surplus and undivided profits of the defendant, including in the computation as assets Bonds and Securities of the United States Government in the sum of \$3,453,665.06 but excluding authorized investments in real estate, was \$6,002,218.01 and on May 1st, 1922, the total capital, surplus and undivided profits of the defendant including in the computation as assets Bonds and Securities of the United States Government in the sum of \$11,343,234.95, but excluding authorized investments in real estate was \$6,528,104.06.

V.

The total loans made by national banks in the State of Minnesota secured by loans on real estate in Minnesota and outstanding on May 1st, 1921, was \$19,713,000, and on May 1st, 1922 was \$25,409,000,— the value of all such loans being included in the amount taken by the tax authorities of the State of Minnesota to determine the values of the shares of said national banks.

The total loans secured by mortgages on real estate in the State of Minnesota made during the year 1921 amounted to at least \$184,560,000, and to a larger sum for the year 1922.

That of the mortgage loans so made in Ramsey County during the year 1921, loans of at least \$6,000,000 were made by individual citizens of Ramsey County and in the year 1922 such mortgage loans to the amount of at least \$6,000,000 were made by individual citizens of Ramsey County.

That the only tax paid upon any of said mortgages held by individuals was the tax provided by Section 2302, General Statutes 1913 as amended by Chapter 73 Laws of 1917, and Chapter 445 Laws of 1921, of fifteen cents upon each \$100 or fraction thereof, of the principal when the loan matures within five years and sixty days from its date, and twenty-five cents for each \$100 or fraction thereof when the loan matures at a later date.

VI.

The full and true value of the shares of the capital stock of the defendant for the year 1921, as so determined, after deducting real estate, was \$6,002,218.01, and said shares were assessed at forty (40) per cent of such full and true value, being \$2,400,887.20, which was taxed at a rate of 67 mills, and the amount levied as taxes was \$160,859.54. The full and true value of the shares of the capital stock of the defendant for the year 1922, as so determined, after deducting real estate, was \$6,528,104.06, and said shares were assessed at forty (40) per cent of such full and true value, being \$2,611,240, which was taxed at a rate of 61½ mills and the amount levied as taxes was \$160,591.26.

VII.

“Money” and “credits” as defined by Section 798 Revised Laws 1905 (now Section 2337, General Statutes, 1923) were returned and assessed for the years 1921 and 1922 for the State of Minnesota, and for the County of Ramsey, as follows:

STATE

1921	1922
\$422,745,839.	\$400,688,948.

COUNTY

83,965,268.	\$87,796,840.
-------------	---------------

Such money and credits are exempted from taxation other than three mills of the fair value thereof without deduction of debts from credits listed for taxation. Such return and assessment did not include money or credits belonging to incorporated banks situated in this State nor any indebtedness on which tax is paid under Sections 2301 to 2309, General Statutes 1923, nor bonds exempt by law.

The total amount of such money and credits as listed and assessed in the City of St. Paul, in the County of Ramsey, in the years 1921 and 1922 by corporations and individuals in cases where the return exceeded Four Thousand Dollars (\$4,000), was as follows:

	1921.	1922.
Corporations	\$51,464,497.	\$48,839,758.
Individuals	25,170,614.	27,825,885.
	<hr/>	<hr/>
Total	\$76,635,111.	\$76,665,643.

the same being approximately 91 per cent of the total amount returned and listed as money and credits in the years 1921 and 1922.

VIII.

"That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county coming into competition with the business of national banks in said county, and with the business of said defendant."

A comparative statement showing the condition of the defendant on the first day of May 1921 and on the first day of May 1922 is as follows:

**COMPARATIVE STATEMENT SHOWING CONDITION OF THE FIRST NATIONAL BANK
OF ST. PAUL, MAY 1, 1921, AND MAY 1, 1922.**

RESOURCES.

	May 1, 1921.	May 1, 1922.
Loans and Discounts	\$30,459,384.24	\$26,489,898.41
Overdrafts	8,007.80	2,709.96
Customers Liability Account of Acceptances	3,453,665.06	11,343,234.95
U. S. Government Securities Owned	1,428,272.84	2,710,730.03
Other Bonds, Stocks and Securities	556,199.42	533,606.46
Banking House Furniture and Fixtures .....	.....	.....
Other Real Estate Owned	2,118,449.30	2,786,649.41
Lawful Reserve with Federal Reserve Bank	848,206.55	426,459.97
Items with Federal Reserve Bank for Collection	4,777,046.45	5,828,689.21
Cash and Amount Due from National Banks	1,691,372.73	2,177,737.15
Amount Due from State Banks and Trust Companies	627,612.48	524,821.58
Exchanges for Clearing House	192,384.40	187,943.62
Checks on Other Banks in Same Place	384,768.82	375,887.25
Outside Checks and Cash Items .....	.....	.....
Redemption Fund	26,375.12	72,762.34
Other Assets .....	.....	.....
Total Resources	\$46,571,745.21	\$53,461,130.34

LIABILITIES.

Capital Stock Paid In	\$ 3,000,000.00	\$ 3,000,000.00
Surplus	2,000,000.00	2,000,000.00

Undivided Profits, Less Expenses, Int. and taxes.....	1,371,847.48	1,394,585.04
National Bank Notes Outstanding .....	.....	.....
Amount due Federal Reserve Bank.....	.....	.....
Amount due National Banks	4,379,197.01	5,311,484.91
Amount due State Banks, Bankers and Trust Cos.....	4,127,603.59	4,954,331.39
Certified Checks Outstanding	44,000.86	27,591.07
Cashier Checks Outstanding	182,771.71	188,650.54
Demand Deposits	21,639,275.61	28,547,905.22
Time Deposits	5,635,010.50	5,683,908.56
U. S. Deposits	1,386,419.16	1,606,680.56
U. S. Bonds Borrowed	2,693,500.00	.....
Other Bonds and Securities Borrowed .....	.....	.....
Bills Payable and Rediscounts .....	.....	.....
Letters of Credit and Travelers checks issued for cash .....	.....	.....
Acceptances Executed for Customers.....	.....	.....
Acceptances Executed by other Banks .....	.....	.....
Other Liabilities	712,119.29	745,993.05
Total Liabilities	<u>\$46,571,745.21</u>	<u>\$53,461,130.34</u>
Total Capital Surplus and Undivided Profits	May 1, 1921.	May 1, 1922.
Total Banking House Furniture and Fixtures	\$ 6,371,847.48	\$ 6,394,585.04
Total U. S. Bonds and Securities	556,199.42	533,606.46
Total other Bonds, Stocks and Securities	3,453,665.06	11,343,234.95
Total Deposits	1,428,272.84	2,710,730.03
	36,794,278.44	46,320,652.25

As Conclusions of Law the court finds that "the State of Minnesota is not entitled to judgment against the defendant for the amount claimed as taxes for the years 1921 and 1922, as herein recited, or in any amount, and that defendant is entitled to judgment that the levy, assessment and extension of said tax for each of said years be cancelled, annulled and set aside."

Let Judgment be entered accordingly.

Dated September 29, 1925.

CHARLES BECHHOEFER,

Judge of District Court.

STATE OF MINNESOTA, COUNTY OF RAMSEY,
District Court, Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff.

-VS-

FIRST NATIONAL BANK OF ST. PAUL,

Defendant.

IN RE: Delinquent Personal Property
Tax for the year 1921,
File No. 146,399.

IN RE: Delinquent Personal Property
Tax for the year 1922,
File No. 152,054.

JUDGMENT.

The above entitled matter having come to be heard before this court on the 29th day of September, 1925, and the court having on said day made and filed its findings of fact and conclusions of law herein, now on motion duly made and pursuant to said findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED AND DECREED, That the State of Minnesota is not entitled to judgment against the

defendant for the amount claimed as taxes for the years 1921 and 1922, as in said findings and conclusions recited, or in any amount, and the levy, assessment and extension of said tax for each of said years be and are cancelled and set aside.

Dated this 29th day of September, 1925.

N. C. ROBINSON,
Clerk of District Court.

STATE OF MINNESOTA, COUNTY OF RAMSEY.
District Court, Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff.

vs.

FIRST NATIONAL BANK OF ST. PAUL,

Defendant.

IN RE: Delinquent Personal Property
Tax for the year 1921,
File No. 146,399.

IN RE: Delinquent Personal Property
Tax for the year 1922,
File No. 152,054.

YOU WILL PLEASE TAKE NOTICE, That the above
named plaintiff, State of Minnesota, appeals to the Supreme
Court of the State of Minnesota, from that certain judg-
ment in favor of the above named defendant, made and en-
tered in the above named court on the 29th day of Septem-
ber, 1925.

Dated this 29th day of September, 1925.

CLIFFORD L. HILTON,
Attorney General.

HARRY H. PETERSON,
County Attorney.

GEORGE A. YOUNGQUIST,
Assistant Attorney General.

ROY A. MacDONALD,
Assistant County Attorney.

PATRICK J. Ryan,
Attorneys for State of Minn.

To:

O'BRIEN, HORN & STRINGER,
Attorneys for Defendant.

And

N. C. ROBINSON,
Clerk of District Court.

STATE OF MINNESOTA, IN SUPREME COURT.

THE STATE OF MINNESOTA,

Appellant

VS.

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

IN RE: Delinquent Personal Property

Tax for the year 1921,

File No. 146,399.

IN RE: Delinquent Personal Property

Tax for the year 1922,

File No. 152,054.

ASSIGNMENT OF ERROR.

The above named appellant having appealed to this court from the judgment of the District Court of Ramsey County, Minnesota, in the above entitled matter, and it having been stipulated that said appeal be heard on the briefs heretofore filed herein on the appeal of the above named respondent, and there being, therefore, no assignments of error on the part of this appellant, the following errors are hereby assigned:

I.

The Court erred in making the following finding of fact:

X "That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county coming into competition with the business of national banks in said county, and with the business of said defendant."

II.

The Court erred in arriving at the following conclusions of law:

"The State of Minnesota is not entitled to judgment against the defendant for the amount claimed as taxes for the years 1921 and 1922, as herein recited, or in any amount, and that defendant is entitled to judgment that the levy, assessment and extension of said tax for each of said years be cancelled, annulled and set aside."

III.

The Court erred in awarding judgment in favor of the Respondent.

CLIFFORD L. HILTON,
G. A. YOUNGQUIST,
HARRY H. PETERSON,
ROY A. MacDONALD,
PATRICK J. RYAN,

Attorneys for Appellant.

Docket 2632

STATE OF MINNESOTA,

Appellant.

25169

vs.

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

Endorsed. Filed October 16, 1925.

Grace F. Kaercher, Clerk.

In Re: Delinquent Personal Property Tax for the year
1921, File No. 146,399.

In Re: Delinquent Personal Property Tax for the year
1922, File No. 152,054.

OPINION

PER CURIAM:

This is an appeal by the plaintiff from a judgment of Ramsey County District Court entered in favor of defendant and against plaintiff in an action brought by the plaintiff to recover alleged delinquent personal property tax for the year 1921 and for the year 1922. The questions presented are those decided by this court on an appeal by the defendant from an order denying a new trial, which decision of this court is reported in — Minn. —, 204 N. W. 874. Upon authority of the decision last referred to the judgment in this action is affirmed.

Judgment affirmed.

STATE OF MINNESOTA, SUPREME COURT

STATE OF MINNESOTA,
Plaintiff and Appellant.

vs.

FIRST NATIONAL BANK OF ST. PAUL,
Defendant and Respondent.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey, be and the same hereby is in all things affirmed.

Dated and signed Nov. 25th, A. D. 1925.

BY THE COURT.

Attest.

GRACE F. KAERCHER,
 Clerk. *

CERTIFICATE

I, Grace Kaercher, Clerk of the Supreme Court of the State of Minnesota, do hereby certify that the above and foregoing is a true, full, correct and complete transcript of the Record, Assignment of Error, and all proceedings in case No. 2,632, wherein the State of Minnesota is plaintiff, and the First National Bank of St. Paul is defendant, as fully as the same remains on file and of record in my office at St. Paul, Minnesota; and that the Exhibits hereto annexed constitute a true, full, correct and complete transcript of said Exhibits as the same are referred to in said record.

WITNESS, My hand officially, and the seal of said court at St. Paul, Minnesota, the 27th day of November, A. D. 1925.

[Seal of the Supreme Court, State of Minnesota.]

GRACE F. KAERCHER,
 Clerk of Supreme Court of State
 of Minnesota.

1.

STATE'S EXHIBIT 1—1921.

LIST OF DELINQUENT PERSONAL PROPERTY TAXES 1921.

STATE OF MINNESOTA

COUNTY OF RAMSEY

} ss.

To the Clerk of the District Court of the County of Ramsey, Minnesota:

I, Kelsey M. Chase, Treasurer of Ramsey County, do hereby certify that the following is a true and correct list of all money and credits and Personal Property Taxes within said County of Ramsey, State of Minnesota for the year 1921 remaining unpaid and delinquent on the 1st day of April, 1922, and the penalties accrued therein, to-wit:

Party Assessed	Year	Valuation	Tax	Penalty	Total
First Nat. Bank	1921	\$2,437,442	\$163,308.62	\$16,330.81	\$179,639.48

STATE'S EXHIBIT 1—1922.

LIST OF DELINQUENT PERSONAL PROPERTY TAXES 1922

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.

To the Clerk of the District Court of the County of Ramsey, Minnesota:

I, Elsa M. Obst, Treasurer of Ramsey County, do hereby certify that the following is a true and correct list of all money and credits and Personal Property Taxes within said County of Ramsey, State of Minnesota for the year 1922 remaining unpaid and delinquent on the 1st day of April, 1923, and the penalties accrued therein, to-wit:

•	•	•	•	•	•	•
Party Assessed	Year	Valuation	Tax	Penalty	Total	
First Nat. Bank	1922	\$2,611,240	\$160,591.26	\$16,059.13	\$	176,650.39

EXHIBIT A

TAX RATE PER \$1,000.00 IN RAMSEY COUNTY, MINN., FOR 1921.

Assessment Districts	State			County		City, Villages and Towns					Total	Special School District Rates	
	Revenue	School	Teachers Pension	Revenue	Local 1 Mill	Revenue	School	Interest and Sinking Fund	Road and Bridge	Road Drag		No. H	
St. Paul, 1st Division..	2.95	1.23		15.42	1.00	27.93	14.07	4.40			67.00	1	47.00
St. Paul, 2nd Division..	2.95	1.23		15.42	1.00	27.93	14.07	4.10			66.70	2	27.00
New Brighton	2.95	1.23	0.05	15.42	1.00	27.45					*48.10	3	31.00
North St. Paul	2.95	1.23	0.05	15.42	1.00	28.85	39.10	4.20			92.80	4	9.00
White Bear Village ...	2.95	1.23	0.05	15.42	1.00	28.85	45.50	1.80			96.80	5	45.50
Mounds View	2.95	1.23	0.05	15.42	1.00	.85			2.30	1.00	*24.80	6	34.50
New Canada	2.95	1.23	0.05	15.42	1.00	.65			3.50	1.00	*25.80	7	15.00
Rose	2.95	1.23	0.05	15.42	1.00	.45		.35	1.75	1.00	*24.20	8	8.50
White Bear Town	2.95	1.23	0.05	15.42	1.00	.75			3.20	1.00	*25.60	9	19.30
												10	11.50
												11	6.30
												12	6.30
												13	5.70
												14	18.30
												15	6.70
												16	22.50
												17	13.30
												18	13.50
												19	16.10
												20	18.90
												21	11.20
												22	10.90
												23	8.80
												24	31.40
												25	7.20
												26	25.60
												27	26.90
												28	8.50
												29	14.00
												30	14.40

*Special School Tax Not Included.

EXHIBIT B.

TAX RATES PER \$1,000 IN RAMSEY COUNTY, MINN., FOR 1922.

Assessment Districts	State			County		City, Villages and Towns					Total	Special School District Rates
	Revenue	School	Teachers Pension	Revenue	One Mill	Revenue	School	Interest and Sinking Fund State Loan	Road and Bridge	Road Drag		No. 1.....49.30
St. Paul, 1st Division..	2.90	1.23		8.77	1.00	29.83	15.25	2.52			61.50	No. 2.....25.40
St. Paul, 2nd Division..	2.90	1.23		8.77	1.00	29.83	15.25	2.22			61.20	No. 3.....37.70
New Brighton.....	2.90	1.23	0.05	8.77	1.00	28.05					*42.00	No. 4.....10.00
North St. Paul.....	2.90	1.23	0.05	8.77	1.00	6.65	31.80	4.20			56.60	No. 5.....51.70
White Bear Lake.....	2.90	1.23	0.05	8.77	1.00	22.55	51.70	14.40			102.60	No. 6.....28.30
Mounds View	2.90	1.23	0.05	8.77	1.00	.90			2.45	1.00	*18.30	No. 7.....20.00
New Canada.....	2.90	1.23	0.05	8.77	1.00	.60			3.65	1.00	*19.20	No. 8.....9.50
Rose	2.90	1.23	0.05	8.77	1.00	1.00			1.05	1.00	*17.00	No. 8 1/2.....17.90
White Bear Town.....	2.90	1.23	0.05	8.77	1.00	.80			2.25	1.00	*18.00	No. 10.....18.60
												No. 12.....7.40
												No. 14.....14.50
												No. 15.....22.00
												No. 16.....7.40
												No. 17.....28.50
												No. 18.....11.60
												No. 19.....18.30
												No. 20.....19.40
												No. 21.....21.00
												No. 23.....14.60
												No. 24.....11.20
												No. 25.....10.80
												No. 26.....27.00
												No. 28.....13.30
												No. 29.....30.00
												No. 31.....30.20
												No. 32.....9.20
												No. 33.....22.20
												No. 35.....15.30

*—Special school tax not included.

TAX RATES IN MILLS, EFFECTIVE IN RAMSEY COUNTY, -1911-1923.

1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923
29.30	28.20	32.30	41.00	46.60	42.60	44.00	47.00	62.50	71.50	67.00	61.50	72.40

EXHIBIT C.

Call No. 155

COMPARATIVE ABSTRACT

Showing condition of State Banks, Savings Banks and Trust Companies in MINNESOTA at close of business on dates named as compiled by
S. B. Duea, Superintendent of Banks.

Resources	1160 State Banks June 30, 1921	9 Savings Banks June 30, 1921	26 Trust Companies June 30, 1921	Consolidated June 30, 1921	Consolidated Feb. 21, 1921	Increase	Decrease
Guaranty Fund	\$.....	\$.....	\$ 2,067,183.50	\$ 2,067,183.50	\$ 2,013,604.52	\$ 53,578.98	\$.....
Loans and Discounts, Secured and Unsecured.....	335,547,644.30	17,180,556.34	15,273,198.14	368,001,398.78	367,360,308.30	641,090.48	.....
Overdrafts	1,122,253.76	.....	2,771.15	1,125,024.91	970,846.57	154,178.34	.....
U. S. Bonds	13,369,840.32	.....	497,087.59	13,866,927.91	16,830,235.11	.....	2,963,307.20
Other Bonds and Securities.....	16,060,513.90	41,244,030.50	13,068,244.76	70,372,789.16	68,602,650.14	1,770,139.02	.....
Federal Reserve Stock	139,850.00	.....	17,100.00	156,950.00	138,500.00	18,450.00	.....
Banking House, Furniture and Fixtures	10,580,445.40	391,316.80	140,053.67	11,111,815.87	10,880,389.33	231,426.54	.....
Other Real Estate.....	2,288,125.22	33,414.92	410,566.36	2,732,106.50	2,478,918.55	253,187.95	.....
Due from Federal Reserve Bank.	2,206,629.87	.....	.....	2,206,629.87	1,906,881.95	299,747.92	.....
Accounts Collectible .....	.....	.....	1,429,938.59	1,429,938.59	1,488,555.73	.....	58,617.14
Due from Banks and Cash on Hand	34,525,113.49	2,952,294.81	3,595,913.08	41,073,321.38	44,065,906.25	.....	2,992,584.87
Trust Funds in Cash and in banks	.....	.....	4,502,868.52	4,502,868.52	2,153,552.86	2,349,315.66	.....
Checks and Cash Items	2,185,903.70	124,843.65	.....	2,310,747.35	2,398,085.79	.....	87,338.44
Paid out for Expense in Excess of Earnings	1,035,756.37	.....	17,363.97	1,053,120.34	334,038.96	719,081.38	.....
Other Resources	357,281.64	54,475.28	110,314.30	522,071.22	1,638,046.18	.....	1,115,974.96
Totals	\$419,419,357.97	\$61,980,932.30	\$41,132,603.63	\$522,532,893.90	\$523,260,520.24	\$6,490,196.27	\$7,217,822.61

Liabilities

Capital Stock	\$ 28,529,500.00	\$ *350,000.00	\$ 7,647,907.42	\$ 36,527,407.42	\$ 36,066,626.32	\$ 460,781.10	\$.....
Surplus	11,668,502.68	1,356,000.00	2,281,444.04	15,306,146.72	15,264,010.35	42,136.37	.....
Undivided Profits, Net.....	2,400,040.27	1,434,690.58	1,084,309.74	4,919,040.59	5,075,679.19	.....	156,638.60
Reserved for Taxes and Interest.	213,214.84	.....	236,801.51	450,016.35	678,805.98	.....	228,789.63
Reserved for Depreciation	298,273.26	7,835.50	16,890.93	322,999.69	341,897.53	.....	18,897.84
Notes Rediscounted and Bills Payable	28,194,339.10	150,000.00	1,413,321.66	29,757,660.76	29,807,405.94	.....	49,745.18
Bonds Bought but not paid for..	.....	.....	217,900.00	217,000.00	161,000.00	56,000.00	.....
Dividends Unpaid	140,254.46	.....	.....	140,254.46	102,354.10	37,900.36	.....
Deposits Subject to Check.....	96,754,948.13	.....	6,759,532.09	103,514,480.22	97,755,482.55	5,758,997.67	.....
Demand Certificates	685,926.78	.....	214,901.49	900,828.27	662,826.96	238,001.31	.....
Certified Checks	286,876.55	.....	27,185.41	314,061.96	205,950.61	108,111.35	.....
Cashier's Checks	4,043,066.54	2,701.26	263,016.55	4,308,784.35	4,625,468.88	.....	316,684.53
Accounts and Claims Payable...	.....	.....	3,135,164.67	3,135,164.67	2,239,505.59	895,659.08	.....
Due to Banks	4,700,447.28	.....	273,418.98	4,973,866.26	5,787,963.00	.....	814,096.74
Savings Deposits	56,834,604.71	58,603,654.51	7,886,712.15	123,324,971.37	123,958,376.53	.....	633,405.16
Time Certificates	184,405,960.23	51,520.00	4,514,979.92	188,972,460.15	195,697,238.75	.....	6,724,778.60
Trust Deposits .....	.....	.....	4,876,244.71	4,876,244.71	3,097,195.09	1,779,049.62	.....
Other Liabilities	263,403.14	24,530.45	283,572.36	571,505.95	1,732,732.87	.....	1,161,226.92
Totals	\$419,419,357.97	\$61,980,932.30	\$41,132,403.63	\$522,532,893.90	\$523,260,520.24	\$9,376,636.86	\$10,104,263.20

*Two Stock Companies.

Total Deposits	\$434,461,116.42
Net Increase in Deposits	328,754.36
Reserve on Hand (Banks and Trust Companies)	44,641,921.26
Amount of Reserve Required by Law	30,429,109.74

DEFTS. EX. D.

Call No. 157

COMPARATIVE ABSTRACT

Showing condition of State Banks, Savings Banks and Trust Companies in MINNESOTA at close of business on dates named as compiled by the
Dept. of Banking, S. B. Duea, Superintendent of Banks.

Resources	1146 State Banks Dec. 31, 1921	9 Savings Banks Dec. 31, 1921	27 Trust Companies Dec. 31, 1921	Consolidated Dec. 31, 1921	Consolidated Oct. 6th, 1921	Increase	Decrease
Guaranty Fund	\$.....	\$.....	\$ 2,197,183.50	\$ 2,197,183.50	\$ 2,283,083.50	\$.....	\$ 85,900.00
Loans and Discounts, Secured and Unsecured.....	315,181,728.47	16,753,920.56	15,857,741.47	347,793,390.50	356,066,658.26	.....	8,273,267.76
Overdrafts	805,250.60	.....	1,017.62	806,268.22	1,168,941.56	.....	362,673.34
U. S. Bonds	10,004,241.06	.....	809,187.32	10,813,428.38	13,556,154.14	.....	2,742,725.76
Other Bonds and Securities.....	15,895,366.85	41,066,619.06	13,415,157.21	70,377,143.12	71,186,084.19	.....	808,941.07
Federal Reserve Stock	128,700.00	.....	18,000.00	146,700.00	176,192.28	.....	29,492.28
Banking House, Furniture and Fixtures	10,443,700.65	387,752.21	338,490.34	11,169,943.20	11,379,965.22	.....	210,022.02
Other Real Estate.....	2,563,787.94	58,434.90	585,741.38	3,207,964.22	2,834,613.00	373,351.22	.....
Due from Federal Reserve Bank.	2,132,899.85	.....	.....	2,132,899.85	2,318,635.89	.....	185,736.04
Accounts Collectible .....	.....	.....	1,651,683.56	1,651,683.56	1,509,439.83	142,243.73	.....
Due from Banks and Cash on Hand	35,156,238.60	3,265,704.21	2,877,975.41	41,299,918.22	38,472,275.97	2,827,642.25	.....
Trust Funds in Cash and in banks	.....	.....	4,159,639.36	4,159,639.36	7,643,017.62	.....	3,483,378.26
Checks and Cash Items	2,553,726.44	267,836.04	.....	2,821,562.48	2,126,433.71	695,128.77	.....
Paid out for Expense in Excess of Earnings	357,030.14	.....	2,753.28	359,783.42	1,543,738.65	.....	1,183,955.23
Other Resources	442,077.73	4,158.35	41,095.10	487,331.18	382,345.04	104,986.14	.....
Totals	\$395,664,748.33	\$61,804,425.33	\$41,955,665.55	\$499,424,839.21	\$512,647,578.86	\$1,143,352.11	\$17,366,091.76

Liabilities

Capital Stock	\$ 27,839,500.00	\$ *350,000.00	\$ 8,079,769.63	\$ 36,269,269.63	\$ 36,659,142.42	\$.....	\$ 389,872.79
Surplus	11,410,017.30	1,456,000.00	2,277,521.78	15,143,539.08	15,114,760.57	28,778.51	.....
Undivided Profits, Net.....	4,108,655.20	1,355,379.07	1,239,689.68	6,703,723.95	4,722,747.41	1,980,976.54	.....
Reserved for Taxes and Interest.	304,150.34	.....	391,874.53	696,024.87	488,725.14	207,299.73	.....
Reserved for Depreciation	307,118.99	7,835.50	34,304.43	349,258.92	742,732.75	.....	393,473.83
Notes Rediscounted and Bills Payable	27,814,685.89	155,000.00	1,258,400.00	29,228,085.89	30,012,156.09	.....	784,070.20
Bonds Bought but not paid for..	.....	.....	441,000.00	441,000.00	321,600.00	119,400.00	.....
Dividends Unpaid	161,207.76	.....	.....	161,207.76	54,153.82	107,053.94	.....
Deposits Subject to Check.....	84,132,444.60	.....	6,621,467.40	90,753,912.00	97,376,612.07	.....	6,622,700.07
Demand Certificates	441,698.51	.....	121,431.32	563,129.83	599,235.56	.....	36,105.73
Certified Checks	190,576.60	.....	42,482.61	233,059.21	279,648.02	.....	46,588.81
Cashier's Checks	4,243,952.27	1,493.02	396,906.83	4,642,352.12	4,743,417.19	.....	101,065.07
Accounts and Claims Payable...	.....	.....	3,071,705.81	3,071,705.81	2,902,679.11	169,026.70	.....
Due to Banks.....	4,287,378.81	1,377.48	530,068.97	4,818,825.26	5,273,537.08	.....	454,711.82
Savings Deposits	56,736,715.71	58,416,864.55	9,720,801.21	124,874,381.47	123,893,948.08	980,433.39	.....
Time Certificates	173,244,176.49	53,953.90	3,043,029.92	176,341,160.31	181,294,850.92	.....	4,953,690.61
Trust Deposits .....	.....	.....	4,598,644.44	4,598,644.44	7,829,024.57	.....	3,230,380.13
Other Liabilities	442,469.86	6,521.81	86,566.99	535,558.66	338,608.06	196,950.60	.....
Totals	\$395,664,748.33	\$61,804,425.33	\$41,955,665.55	\$499,424,839.21	\$512,647,578.86	\$3,789,919.41	\$17,012,659.06

*Two Stock Companies.

Total Deposits	\$410,058,378.21
Net Decrease in Deposits	14,188,728.21
Reserve on Hand (Banks and Trust Companies).....	44,432,818.07
Amount of Reserve Required by Law.....	28,232,497.09

DEFTS. EX. E.

Call No. 158

COMPARATIVE ABSTRACT

Showing condition of State Banks, Savings Banks and Trust Companies in MINNESOTA at close of business on dates named as compiled by the Department of Banking, R. B. Rathbun, Superintendent of Banks.

Resources	1144 State Banks April 7, 1922	9 Savings Banks April 7, 1922	26 Trust Companies April 7, 1922	Consolidated April 7, 1922	Consolidated Dec. 31, 1921	Increase	Decrease
Guaranty Fund	\$.....	\$.....	\$ 2,140,733.50	\$ 2,140,733.50	\$ 2,197,183.50	\$.....	\$ 56,450.00
Loans and Discounts, Secured and Unsecured.....	308,043,184.05	14,931,964.02	16,476,959.49	339,452,107.56	347,793,390.50	.....	8,341,282.94
Overdrafts	877,827.67	.....	1,367.91	879,195.58	806,268.22	72,927.36	.....
U. S. Bonds	9,830,679.57	.....	1,814,333.46	11,645,013.03	10,813,428.38	831,584.65	.....
Other Bonds and Securities.....	16,586,732.97	44,515,048.06	13,055,363.19	74,157,144.22	70,377,143.12	3,780,001.10	.....
Federal Reserve Stock	145,386.57	.....	18,960.00	163,386.57	146,700.00	16,686.57	.....
Banking House, Furniture and Fixtures	10,498,507.94	357,726.78	387,421.26	11,243,655.98	11,169,943.20	73,712.78	.....
Other Real Estate.....	3,122,242.31	59,297.00	636,890.22	3,818,429.53	3,207,964.22	610,465.31	.....
Due from Federal Reserve Bank.	2,182,257.43	.....	.....	2,182,257.43	2,132,899.85	49,357.58	.....
Accounts Collectible .....	.....	.....	1,498,805.19	1,498,805.19	1,651,683.56	.....	152,878.37
Due from Banks and Cash on Hand	38,861,835.32	3,741,610.69	4,871,640.06	47,475,086.07	41,209,918.22	6,175,167.85	.....
Trust Funds in Cash and in banks	.....	.....	4,894,695.44	4,894,695.44	4,159,639.36	735,056.08	.....
Checks and Cash Items	2,882,236.64	80,172.64	.....	2,962,409.28	2,821,562.48	140,846.80	.....
Paid out for Expense in Excess of Earnings	879,825.44	34.06	12,421.05	892,280.55	359,783.42	532,497.13	.....
Other Resources	154,620.63	4,343.46	27,421.21	186,385.30	487,331.18	.....	300,945.88
Totals	\$394,065,336.54	\$63,690,196.71	\$45,836,051.98	\$503,591,585.23	\$499,424,839.21	\$13,018,303.21	\$8,851,557.19

Liabilities

Capital Stock	\$ 27,669,500.00	\$ *350,000.00	\$ 8,054,380.44	\$ 36,073,880.44	\$ 36,269,269.63	\$.....	\$ 195,389.19
Surplus	11,574,226.00	1,506,000.00	2,335,521.21	15,415,747.21	15,143,539.08	272,208.13	.....
Undivided Profits, Net.....	2,322,898.30	1,608,757.88	1,434,972.35	5,366,628.53	6,703,723.95	.....	1,337,095.42
Reserved for Taxes and Interest.	181,190.14	4,244.51	317,843.11	503,277.76	696,024.87	.....	192,747.11
Reserved for Depreciation	290,891.86	7,835.50	11,683.29	310,410.65	349,258.92	.....	38,848.27
Notes Rediscounted and Bills Payable	22,075,657.19	100,000.00	379,322.63	22,554,979.82	29,228,085.89	.....	6,673,106.07
Bonds Bought but not Paid for..	.....	.....	.....	.....	441,000.00	.....	411,000.00
Dividends Unpaid	34,698.48	.....	.....	34,698.48	161,207.76	.....	126,509.28
Deposits Subject to Check.....	87,167,443.55	.....	7,959,674.04	95,127,117.59	90,753,912.00	4,373,205.59	.....
Demand Certificates	309,201.70	.....	121,787.40	431,080.10	563,129.83	.....	132,049.73
Certified Checks	188,376.13	.....	75,680.68	264,056.81	233,059.21	30,997.60	.....
Cashier's Checks	3,753,936.48	8,129.70	351,631.65	4,113,697.83	4,642,352.12	.....	528,654.29
Accounts and Claims Payable...	.....	.....	3,221,360.74	3,221,360.74	3,071,705.81	149,654.93	.....
Due to Banks.....	5,496,203.84	218.60	241,556.52	5,737,978.96	4,818,825.26	919,153.70	.....
Savings Deposits	57,626,717.74	60,038,013.84	10,547,387.34	128,212,118.92	124,874,381.47	3,337,737.45	.....
Time Certificates	175,233,021.46	55,538.15	3,413,286.59	178,701,846.20	176,341,160.31	2,360,685.89	.....
Trust Deposits .....	.....	.....	7,326,742.10	7,326,742.10	4,598,644.44	2,728,097.66	.....
Other Liabilities	141,373.67	11,458.53	43,130.89	195,963.09	535,558.66	.....	339,595.57
Totals	\$394,065,336.54	\$63,690,196.71	\$45,836,051.98	\$503,591,585.23	\$499,424,839.21	\$14,171,740.95	\$10,004,994.93

*Two Stock Companies.

Total Deposits	\$423,170,697.73
Net Increase in Deposits	13,112,319.52
Reserve on Hand (Banks and Trust Companies).....	51,052,488.56
Amount of Reserve Required by Law.....	29,117,548.00

DEFTS. EX. F.

DOMESTIC STOCK FIRE COMPANIES.

Name of Company.	Capital	Total Admitted Assets	Net Surplus	Premiums Received In Minn.	Page
Mpls. F. & M., Mpls.....	\$ 200,000.00	\$ 1,066,659.70	\$ 156,472.72	\$ 56,441.11	178
Minn. Fire, Chatfield.....	100,840.00	152,026.14	8,772.22	15,237.48	176
Northwestern F. & M., Mpls.....	400,000.00	1,658,468.86	227,686.61	175,429.00	199
St. Paul F. & M., St. Paul.....	2,000,000.00	20,517,281.08	8,079,231.92	577,495.89	215
Twin City Fire, Mpls.....	500,000.00	1,121,317.82	233,450.93	217,207.21	238
Total	\$3,200,840.00	\$24,515,753.60	\$ 8,705,614.40	\$1,041,810.69	

DOMESTIC LIFE COMPANIES.

Duluth Liability, Duluth.....	\$ 10,709.44	\$ 12,991.62	\$ 89.17	\$ 5,407.31	503
Friendly Service, Mpls.....	10,690.00	21,917.74	1,990.82	21,889.71	
Midland, St. Paul	167,954.50	1,028,984.55	34,368.31	136,195.25	540
Minn. Mutual, St. Paul.....	Mutual	10,376,021.64	782,321.66	957,087.27	542
Modern Life, St. Paul.....	100,000.00	174,426.35	20,657.37	158,421.21	546
North Am. Life & Cas., Mpls.....	125,000.00	231,190.79	15,131.87	19,366.83	566
Northern States Life, Mpls.....	100,000.00	346,109.30	41,975.21	91,157.46	568
Northwestern Nat., Mpls.....	Mutual	14,503,960.75	1,005,709.31	1,305,829.61	571
Travelers Equitable, Mpls.....	136,200.00	308,088.71	33,462.65	45,986.88	610
Twin City Life, St. Paul.....	100,000.00	424,155.16	45,152.43	78,995.36	
Total	\$ 750,553.94	\$27,427,900.61	\$ 1,980,858.80	\$2,820,336.89	

DOMESTIC CASUALTY COMPANIES.

North Am. Life & Cas., Mpls.....	+	+	+	\$ 29,363.70	566
Real Estate Title, Mpls.....	\$ 200,000.00	\$ 288,620.08	\$ 65,961.87	6,013.89	718
Travelers Equitable, Mpl.	+	+	+	184,843.05	610
Total	\$ 200,000.00	\$ 288,620.08	\$ 65,961.87	\$ 220,220.64	

RECAPITULATION.

Domestic Stock Fire.....	\$3,200,840.00	\$24,515,753.60	\$ 8,705,614.40	\$1,041,810.69	
Domestic Life	750,553.94	27,427,900.61	1,980,858.80	2,820,336.89	
Domestic Casualty	200,000.00	288,620.08	65,961.87	220,220.64	
Total	\$4,151,393.94	\$52,232,274.29	\$10,752,435.07	\$4,082,368.22	

+Figures included under Life Companies.

DEFTS. EX. G.

LIST OF MONEY AND CREDITS.

Total 1921 and 1922 of the County of Ramsey, State of Minnesota, on May 1, 1923, as required by Chapter 285, Laws of 1911.

ITEMS	1921	1922
1. Money subject to check and on deposit in banks, Trust companies, or similar financial institutions, wherever situate...	\$ 9,117,749	\$ 9,341,138
2. Money on deposit in banks, trust companies, postal and other Savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments.....	745,030	1,053,650
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere	479,167	718,318
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness.....	7,265,200	6,825,425
5. Bonds, except United States Bonds and bonds issued by State of Minnesota or any municipality thereof and such as are secured by real estate mortgages recorded in this state....	8,290,795	10,785,020
6. Real estate mortgages upon lands situate outside of this state, and amount secured thereby.....	2,072,790	1,989,760
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby.....	99,055	135,160
8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby.....	1,649,369	1,374,835
9. Judgments in this state or elsewhere.....	200,740	615,995
10. Book accounts	36,772,916	34,617,422
11. Contracts for sale of real estate outside of this state.....	391,400	328,945
12. Contracts for sale of real estate in this state which have not been recorded	598,830	444,885
13. Annuities, royalties, and all sums of money receivable at stated periods	72,650	82,150
14. All claims and demands for money or other valuable thing not above enumerated	105,800	173,700
15. Shares of stock in corporations the property of which is not assessed or taxed in this state.....	8,773,620	8,180,240
Grand Total	<u>\$76,635,111</u>	<u>\$76,665,643</u>

DEFTS. EX. H.

ASSESSMENT BY ITEMS OF MONEY AND CREDITS FOR ENTIRE STATE IN 1918

(Except Pope County)

ITEMS	Per Cent of Total	Assessor's Valuation
1. Money subject to check and on deposit in banks, Trust companies, or similar financial institutions, wherever situate..	18.18	\$59,196,202
2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks or similar instruments.....	12.65	41,215,118
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere	1.64	5,345,760
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness.....	10.13	32,980,800
5. Bonds, except municipal and United States bonds and such as are secured by real estate mortgages recorded in this state	4.51	14,708,895
6. Real estate mortgages upon lands situate outside of this state, and amount secured thereby.....	3.87	12,594,324
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby.....	0.68	2,226,327
8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby.....	0.86	2,791,965
9. Judgements in this state or elsewhere.....	0.21	684,555
10. Book accounts	34.34	111,842,966
11. Contracts for sale of real estate outside of this state.....	0.63	2,081,098
12. Contracts for sale of real estate in this state which have not been recorded	1.53	4,987,166
13. Annuities, royalties, and all sums of money receivable at stated periods	0.15	426,113
14. All claims and demands for money or other valuable thing not above enumerated	4.61	15,021,066
15. Shares of stock in corporations, the property of which is not assessed or taxed in this state.....	6.01	19,578,065
Total		<u>\$325,680,420</u>

EXHIBIT I.

ASSESSMENT BY ITEMS OF MONEY AND CREDITS FOR RAMSEY COUNTY IN 1918.

ITEMS	Per Cent of Total	Assessor's Valuation
1. Money subject to check and on deposit in banks, Trust companies, or similar financial institutions, wherever situate..	15.07	\$10,934,887
2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments.....	3.58	2,599,792
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere	1.89	1,374,247
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness.....	7.80	5,658,835
5. Bonds, except municipal and United States bonds and such as are secured by real estate mortgages recorded in this state	11.51	8,352,400
6. Real estate mortgages upon lands situate outside of this state, and amount secured thereby.....	2.83	2,052,476
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby.....	.48	348,278
8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby.....	1.92	1,392,230
9. Judgements in this state or elsewhere.....	.03	20,915
10. Books accounts	41.25	29,927,457
11. Contracts for sale of real estate outside of this state.....	.21	155,311
12. Contracts for sale of real estate in this state which have not been recorded .....	.35	250,019
13. Annuities, royalties, and all sums of money receivable at stated periods .....	.04	27,180
14. All claims and demands for money or other valuable thing not above enumerated	3.62	2,628,008
15. Shares of stock in corporations, the property of which is not assessed or taxed in this state.....	9.42	6,830,570
Total		<u>\$72,552,605</u>

DEFENDANT'S EXHIBIT "J".

Trust Companies Organized Under the Laws of
Minnesota Paying Gross Earnings Tax.

Name and Location	Capital Stock
Crookston Trust Company, Crookston, Minn.	\$ 50,000.00
Guaranty Trust Company and Savings Bank, Fergus Falls, Minn.	50,000.00
Farmers Trust Company, Hastings, Minn.	50,000.00
Citizens Loan & Trust Company, Mankato, Minn.	50,000.00
Mankato Loan & Trust Company, Mankato, Minn.	60,000.00
Farmers Trust and Savings Bank, New Ulm, Minn.	50,000.00
Security Loan and Trust Company, Red Wing, Minn.	125,000.00
Rochester Loan & Trust Company, Rochester, Minn.	100,000.00
Builders Trust Company, St. Paul, Minn.	200,000.00
Midland Trust and Savings Bank, St. Paul, Minn.	200,000.00
Northwestern Trust Company, St. Paul, Minn.	1,000,000.00
Stockyards Mortgage and Trust Company, So. St. Paul, Minn.	50,000.00
Deposit Trust and Savings Bank, Winona, Minn.	50,000.00
First Trust and Savings Bank, Winona, Minn.	50,000.00
Merchants Trust Company, Winona, Minn.	50,000.00

ILLUSTRATION

Northwestern Trust Company, St. Paul.

Capital Stock	\$1,000,000.00
Surplus	100,000.00
Undivided profits ...	153,217.62

\$1,253,217.62

Real Estate Holdings

May 1, 1921	96,446.10
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Balance used on basis of shares of national banks ..	\$1,156,771.52
40% of that amount is	\$462,708.60
6% of that is	\$27,762.51
Taxation gross earnings year 1921	\$316,644.43
5% of that is..	\$15,832.22
	<u>\$11,930.29</u>

DEFENDANT'S EX. "K."

Money and Credits of the County of Ramsey, State of Minnesota, as of May 1, 1921, as listed by individuals and by corporations as to all persons and corporations listing credits over \$4,000.

ITEMS.	Corporations	Individuals
1. Money subject to check and on deposit in banks, trust companies, or similar financial institutions, wherever situate...	\$ 5,100,329	\$ 4,017,420
2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments	160,015	585,015
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere	442,790	36,377
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness	4,783,754	2,481,446
5. Bonds, except United States Bonds and bonds issued by State of Minnesota or any municipality thereof and such as are secured by real estate mortgages recorded in this state....	694,820	7,595,975
6. Real estate mortgages upon lands situate outside of this state, and amount secured thereby	105,320	1,967,470
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby.....	5,400	93,655
8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby.....	1,264,685	384,684
9. Judgments in this state or elsewhere.....	192,500	8,240
10. Books accounts	34,206,204	2,566,712
11. Contracts for sale of real estate outside of this state.....	57,120	334,280
12. Contracts for sale of real estate in this state which have not been recorded	354,220	244,610
13. Annuities, royalties, and all sums of money receivable at stated periods		72,650
14. All claims and demands for money or other valuable thing not above enumerated	50,420	55,380
15. Shares of stock in corporations the property of which is not assessed or taxed in this state.....	4,046,920	4,726,700
Total.....	\$76,635,111	\$51,464,497
		\$25,170,614

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DEFENDANT'S EX. "L."

MONEY AND CREDITS

of the County of Ramsey, State of Minnesota, as of May 1, 1922, as listed by individuals and by corporations as to all persons and corporations listing credits over \$4,000.

ITEMS.	Corporations	Individuals
1. Money subject to check and on deposit in banks, trust companies, or similar financial institutions, wherever situate...	\$ 5,845,308	\$ 3,494,830
2. Money on deposit in banks, trust companies, postal and other savings banks or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments	398,745	654,905
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere	266,380	451,938
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness	5,176,615	1,648,810
5. Bonds, except United States Bonds and bonds issued by State of Minnesota or any municipality thereof and such as are secured by real estate mortgages recorded in this state....	853,065	9,931,955
6. Real estate mortgages upon lands situate outside of this state, and amount secured thereby	66,360	1,923,400
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby.....	42,085	93,075
8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby.....	1,027,168	347,667
9. Judgments in this state or elsewhere.....	595,175	20,820
10. Book accounts	32,115,187	2,502,235
11. Contracts for sale of real estate outside of this state.....	29,255	299,690
12. Contracts for sale of real estate in this state which have not been recorded	238,740	206,145
13. Annuities, royalties, and all sums of money receivable at stated periods	000	82,150
14. All claims and demands for money or other valuable thing not above enumerated	60,840	112,860
15. Shares of stock in corporations the property of which is not assessed or taxed in this state.....	2,124,835	6,055,405
Total.....	\$76,665,643	\$48,839,758
		\$27,825,885

DEFTS. EX. M.

COMPARATIVE ABSTRACT IN THOUSANDS SHOWING CONDITION OF NATIONAL BANKS IN MINNESOTA APRIL 28, 1921 AND May 5, 1922.

The below figures are compiled from the "Abstract of condition of National Banks" published by the Comptroller of the Currency, Washington, D. C., June 10, 1921 and June 22, 1922, numbered 130 and 135 respectively.

Resources	April 28, 1921 325 Banks Minnesota	April 28, 1921 8 Banks Mpls.	April 28, 1921 7 Banks St. Paul	April 28, 1921 340 Banks Total	May 5, 1922 328 Banks Minnesota	May 5, 1922 8 Banks Mpls.	May 5, 1922 7 Banks St. Paul	May 5, 1922 343 Banks Total
Loans and Discount	\$182,757	\$102,435	\$64,795	\$349,987	\$178,505	\$102,319	\$ 59,251	\$340,075
Overdrafts	336	34	23	393	220	57	9	286
Customers Liability account of acceptances.....	25	1,819	104	1,948	4	2,506	459	2,969
U. S. Government Securities owned	23,835	6,207	11,148	41,190	20,344	10,925	18,236	49,505
Other Bonds, Stocks and Securities	24,307	5,542	4,045	33,894	24,823	5,466	5,283	35,572
Banking Houses Furniture and Fixtures.....	7,477	1,806	2,031	11,314	7,980	1,686	2,028	11,694
Other Real Estate Owned	1,169	659	.....	1,828	1,875	685	.....	2,560
Lawful Reserve with Federal Reserve Bank.....	10,202	8,316	4,994	23,512	9,727	9,511	6,358	25,626
Items with Federal Reserve Bank for collection..	241	3,653	2,552	6,446	282	3,848	2,687	6,817
Cash and amount due from National Banks.....	19,453	8,730	8,515	36,698	22,349	12,159	9,441	43,949
Amount due from State Bks. and Trust Companies	2,066	7,844	3,262	13,172	2,275	6,316	3,399	11,990
Exchanges for Clearing House	263	2,197	1,726	4,186	320	2,856	1,566	4,742
Checks on other banks in same place.....	276	111	94	481	387	111	84	582
Outside checks and cash items	586	1,442	593	2,621	592	2,342	459	3,393
Redemption Fund	555	142	65	762	577	142	65	784
Other Assets	1,040	616	198	1,854	1,224	964	236	2,424
Total Resources	\$274,588	\$151,553	\$104,145	\$530,286	\$271,484	\$161,923	\$109,561	\$542,968

Liabilities

Capital Stock Paid In	\$ 18,171	\$ 12,200	\$ 7,100	\$ 37,471	\$ 18,593	\$ 12,200	\$ 7,100	\$ 37,893
Surplus	10,987	8,060	4,000	23,047	11,069	8,050	3,968	23,087
Undivided Profits less expenses, interest and taxes	5,039	4,724	3,589	13,352	5,444	4,020	3,851	13,315
National Bank Notes outstanding	10,824	2,682	1,223	14,729	11,333	2,756	1,295	15,384
Amount Due Federal Reserve Bank	3	70	.....	73	212	.....	.....	212
Amount Due National Banks	3,567	11,839	7,162	22,568	4,212	15,854	9,284	29,350
Am't due State Banks, Bankers & Trust Companies	6,318	19,824	10,567	36,709	7,293	26,786	13,373	47,452
Certified checks outstanding	226	187	160	573	281	334	131	746
Cashier checks outstanding	2,157	2,787	890	5,834	2,128	3,439	762	6,329
Demand Deposits	78,622	62,490	43,574	184,686	76,363	60,777	44,237	181,377
Time Deposits	129,244	18,788	13,469	161,501	124,345	20,972	21,124	166,441
U. S. Deposits	358	2,735	2,928	6,021	543	3,184	3,029	6,756
U. S. Bonds Borrowed	377	705	5,273	6,355	70	60	.....	130
Other Bonds and Securities borrowed .....	.....	.....	.....	.....	.....	.....	.....	.....
Bills Payable and Rediscounts	8,331	2,637	3,608	14,576	9,244	615	575	10,434
Letters of credit and travelers checks issued for cash	.....	6	.....	6	5	7	5	17
Acceptances Executed for Customers	25	1,514	100	1,639	.....	2,080	447	2,527
Acceptances Executed by other banks .....	.....	305	4	309	4	426	25	455
Other Liabilities	339	.....	498	837	345	363	355	1,063
Total Liabilities	\$274,588	\$151,553	\$104,145	\$530,286	\$271,484	\$161,923	\$109,561	\$542,968
Total Capital Surplus and Undivided Profits.....	\$ 34,197	\$ 24,984	\$ 14,689	\$ 73,870	\$ 35,106	\$ 24,270	\$ 14,919	\$ 74,295
Total Banking House Furniture and Fixtures....	\$ 7,477	\$ 1,806	\$ 2,031	\$ 11,314	\$ 7,980	\$ 1,686	\$ 2,028	\$ 11,694
Total U. S. Bonds and Securities	\$ 23,835	\$ 6,207	\$ 11,148	\$ 41,190	\$ 20,344	\$ 10,925	\$ 18,236	\$ 49,505
Total Other Bonds, Stocks and Securities.....	\$ 24,307	\$ 5,542	\$ 4,045	\$ 33,894	\$ 24,823	\$ 5,466	\$ 5,283	\$ 35,572
Total Deposits	\$220,495	\$118,720	\$ 78,750	\$417,965	\$215,377	\$131,346	\$ 91,940	\$438,663

DEFTS. EX. N.

ABSTRACT OF LOANS IN THOUSANDS SECURED BY REAL ESTATE HELD BY NATIONAL BANKS IN THE STATE OF MINNESOTA ON JUNE 30, 1921 AND JUNE 30, 1922.

1921 figures are compiled from the 1921 Annual Report of the Comptroller of the Currency as made to the Second Session of the Sixty-seventh Congress of the United States, dated December 5, 1921.

		Minnesota June 30, 1921	Mpls. June 30, 1921	St. Paul June 30, 1921	Total June 30, 1921
a.	(Loans Secured by Improved Real Estate)				
	(Conforming to Section 24-Fed. Res. Act.)				
	Farm	\$ 9,743	\$607	\$324	\$10,674
	Other	2,572	143	1	2,716
b.	(Secured by Real Estate taken for Debts)				
	(previously contracted (Sec. 5137 U.S.R.S.))				
	Farm	4,348	179	3	4,530
	Other	1,039	15	11	1,065
	All other Real Estate loans not included)				
	in (a), (b).				
	Farm	582	4	0	586
	) Other	142	0	0	142
	Totals	\$18,426	\$948	\$339	\$19,713

1922 figures are compiled from the 1922 Annual Report of the Comptroller of the Currency as made to the third Session of the Sixty-seventh Congress of the United States, Dated December 4, 1922.

		Minnesota June 30, 1922	Mpls. June 30, 1922	St. Paul June 30, 1922	Total June 30, 1922
a.	(Loans Secured by Improved Real Estate)				
	(conforming to Section 24-Fed. Res. Act.)				
	Farm	\$11,281	\$587	\$370	\$12,238
	Other	3,781	17	0	3,798
b.	(Secured by Real Estate taken for Debts)				
	(previously contracted (Sec. 5137 U.S.R.S))				
	Farm	6,986	198	7	7,191
	Other	1,395	285	0	1,680
	All other Real Estate loans not included)				
	in (a), (b).				
	Farm	393	0	0	393
	Other	109	0	0	109
	Totals	\$23,945	\$1,087	\$377	\$25,409

The above figures show only the amount of Real Estate loans held on those dates but do not reveal aggregate volume of dealings during the years 1921 and 1922.

DEFTS. EX. O.

ABSTRACT SHOWING TOTAL INDIVIDUAL DEPOSITS, UNITED STATES BONDS AND SECURITIES, STATE OF MINNESOTA BONDS AND MUNICIPAL BONDS OF THE STATE OF MINNESOTA HELD BY BANKS IN RAMSEY COUNTY ON MAY 1, 1921 AND MAY 1, 1922.

	Number of Reporting Banks	Individual Deposits		U. S. Bonds & Securities		State of Minnesota Bonds and Municipal Bonds of the State of Minnesota	
		May 1, 1921	May 1, 1922	May 1, 1921	May 1, 1922	May 1, 1921	May 1, 1922
National Banks	8	\$54,090,477.33	\$64,706,319.10	\$ 8,952,254.81	\$17,340,340.36	\$ 653,600.00	\$ 475,400.00
State Banks	25	18,611,270.79	18,789,008.45	1,763,016.41	1,280,477.95	346,455.03	470,383.74
Savings Banks & Trust Companies..	5	13,560,659.14	14,498,600.08	952,411.52	899,764.70	391,232.50	247,744.64
Grand Totals		\$85,662,407.26	\$97,993,927.63	\$11,667,682.74	\$19,520,583.01	\$1,391,287.53	\$1,193,528.38

The above figures are compiled from the figures submitted by the different banks included in the above totals.

DEFTS. EX. P.

ABSTRACT SHOWING INDIVIDUAL DEPOSITS, UNITED STATES BONDS AND SECURITIES, STATE OF MINNESOTA BONDS AND MUNICIPAL BONDS OF THE STATE OF MINNESOTA HELD BY BANKS IN RAMSEY COUNTY ON MAY 1, 1921 AND MAY 1, 1922.

National Banks	Individual Deposits		U. S. Bonds & Securities		State of Minnesota Bonds and Municipal Bonds of the State of Minnesota	
	May 1, 1921	May 1, 1922	May 1, 1921	May 1, 1922	May 1, 1921	May 1, 1922
American National Bank, St. Paul.....	\$ 2,732,176.83	\$ 2,995,891.37	\$ 558,917.35	\$ 558,917.35	\$ 13,000.00	\$ 13,000.00
Capital National Bank, St. Paul.....	7,216,657.27	7,305,057.41	1,733,113.60	2,467,519.25	43,700.00	63,000.00
First National Bank, St. Paul	25,201,055.57	34,315,314.93	3,453,665.06	11,343,234.95	315,000.00	207,000.00
Merchants National Bank, St. Paul.....	16,418,712.36	17,096,211.61	2,550,508.80	2,425,568.81	281,500.00	192,000.00
First National Bank, White Bear Lake.....	350,000.00	415,000.00	33,000.00	27,100.00	400.00	400.00
National Exchange Bank, St. Paul.....	1,135,440.57	1,140,051.96	369,000.00	258,000.00	.....	.....
Twin Cities National Bank	603,791.64	677,430.06	254,050.00	260,000.00	.....	.....
Wabash National Bank, St. Paul.....	432,643.09	761,361.76	.....	.....	.....	.....
Totals	\$54,090,477.33	\$64,706,319.10	\$8,952,254.81	\$17,340,340.36	\$653,600.00	\$475,400.00
State Banks						
Broadway State Bank, St. Paul	\$.....	\$.....	\$.....	\$.....	\$.....	\$.....
Central Metropolitan Bank, St. Paul.....	2,730,472.43	4,142,740.62	160,879.27	400,000.00	.....	.....
Cherokee State Bank, St. Paul.....	95,130.46	154,086.93	250.00	1,700.00	.....	.....
Citizens State Bank, St. Paul.....	356,291.14	362,026.33	15,950.00	10,250.00	.....	.....
City Bank of St. Paul, St. Paul.....	344,210.96	463,628.00	139,502.35	36,067.17	.....	.....
Commercial State Bank, St. Paul.....	1,110,607.70	1,224,184.07	125,000.00	125,000.00	.....	.....
Cosmopolitan State Bank, St. Paul.....	260,417.46	251,896.75	31,650.00	8,500.00	.....	.....
Dayton's Bluff State Bank, St. Paul.....	1,314,470.37	1,335,589.68	59,200.00	79,200.00	111,755.03	106,385.11
East Side State Bank, St. Paul.....	235,000.00	312,000.00	29,000.00	17,500.00	4,900.00	.....
Farmers & Merchants State Bank, St. Paul.....	368,415.49	404,525.04	17,633.46	17,663.96	4,000.00	.....
First State Bank, New Brighton, Minnesota.....	136,117.17	119,193.93	4,800.00	3,000.00	1,000.00	.....
First State Bank, North St. Paul, Minn.....	293,309.51	309,310.17	4,000.00	11,500.00	.....	.....
First State Bank, White Bear Lake.....	350,000.00	300,000.00	15,775.00	900.00	300.00	300.00
Grand Ave. State Bank, St. Paul.....	.....	.....	.....	.....	.....	.....
Great Northern State Bank, St. Paul.....	735,000.00	790,000.00	29,750.00	10,000.00	.....	.....

Liberty State Bank, St. Paul	501,949.38	393,475.00	26,000.00	28,000.00	8,200.00	41,398.63
Midway State Bank, St. Paul	144,647.77	166,107.90	.....	.....	.....	.....
Minnesota Transfer State Bank, St. Paul	839,481.22	911,469.48	11,700.00	.....	.....	.....
Founders Park State Bank, St. Paul	511,654.45	550,297.94	87,536.47	117,042.12	20,500.00	42,500.00
Payne Ave. State Bank, St. Paul	991,040.29	1,189,952.15	35,650.00	57,700.00	101,000.00	184,000.00
Peoples State Bank, St. Paul	1,453,585.90	.....	227,000.00	.....	.....	.....
Phalen Park State Bank, St. Paul .....	.....	.....	.....	.....	.....	.....
Produce Exchange Bank, St. Paul	384,325.87	383,983.65	21,650.00	22,600.00	29,000.00	23,000.00
Ramsey County State Bank, St. Paul	1,381,339.88	1,417,897.68	106,650.00	75,500.00	1,000.00	1,000.00
Rice Street State Bank, St. Paul .....	.....	.....	.....	.....	.....	.....
St. Anthony Park State Bank, St. Paul	267,500.00	295,500.00	15,500.00	49,500.00	13,000.00	19,000.00
St. Paul State Bank, St. Paul	1,472,920.10	1,529,727.09	522,439.86	141,454.70	45,800.00	45,800.00
Security State Bank, St. Paul	1,045,793.70	1,095,428.27	54,200.00	46,100.00	.....	.....
West St. Paul State Bank, St. Paul .....	.....	.....	.....	.....	.....	.....
Western State Bank, St. Paul	687,589.54	685,987.77	21,300.00	21,300.00	6,000.00	7,000.00
Totals	\$18,011,270.79	\$18,789,008.45	\$1,763,016.41	\$ 1,280,477.95	\$346,455.03	\$470,383.74

Savings Banks & Trust Companies.

Capital Trust and Savings Bank, St. Paul	\$ 333,157.00	\$ 442,656.00	\$.....	\$.....	\$150,000.00	\$150,000.00
Central Trust and Savings Bank, St. Paul	114,851.43	252,928.84	.....	.....	.....	.....
Merchants Trust and Savings Bank	2,756,061.96	3,581,757.62	28,500.00	45,850.00	155,800.00	42,244.64
Northern Savings Bank, St. Paul	3,374,805.94	3,277,473.10	514,787.62	388,052.20	.....	.....
State Savings Bank, St. Paul	6,981,842.81	6,943,784.52	409,123.90	465,862.50	85,432.50	55,500.00
Totals	\$13,560,659.14	\$14,498,600.08	\$ 952,411.52	\$ 899,764.70	\$391,232.50	\$247,744.64

DEFTS. EX. Q.

AGGREGATE DEALINGS IN LOCAL INVESTMENT MARKET FOR YEARS 1921 AND 1922

The below figures are compiled from the "Summary of Local Investment Market" reports published by the Federal Reserve Bank of Minneapolis and include total sales as reported to the Federal Reserve Bank by different Investment houses located in the Twin Cities.

	1921	1922	8 months 1923
Farm Mortgages	\$10,891,470.00	\$ 10,013,990.00	\$ 5,017,915.00
City Mortgages	3,144,599.00	6,582,592.00	5,791,600.00
Land Bank Bonds .....	.....	1,555,405.00	2,447,685.00
U. S. Government and Municipal Bonds and Notes	27,372,823.00	40,111,841.00	33,512,396.00
Corporation Bonds and Notes (Does not include Commercial Paper)	28,425,824.00	36,507,492.00	29,630,154.00
Foreign Securities	8,312,032.00	10,201,825.00	5,083,051.00
Stock (original issues)	1,659,920.00	2,811,609.00	3,861,900.00
All other Securities	1,527,024.00	3,160,041.00	1,804,129.00
Total	<u>\$81,333,692.00</u>	<u>\$110,944,795.00</u>	<u>\$87,148,830.00</u>
Average Percent of total sold to other Dealers...	Figures	34.5*	28.3
Average Percent of total sold to Bankers.....	not	14.3*	13.8
Average Percent of total sold to General Public..	available	51.2*	57.3

*These percentages represent the last three months of 1922—Figures for the first 9 months are not available.

DEFTS. EX. R.

AGGREGATE DEALINGS IN CATTLE LOAN PAPER FOR THE YEARS 1921-1922.

	1921	1922
Total sales reported by three of the larger Cattle Loan and Investment Companies operating in Minnesota.....	\$12,738,373.95	\$9,945,556.67
Amount Sold to Individuals in Minnesota.....	580,665.00	365,083.00
Total amount sold to Individuals, Firms, Corporations and Banks in Minnesota	5,276,090.00	8,048,569.00

DEFTS. EX. S.

ABSTRACT SHOWING TOTAL CAPITAL SURPLUS AND UNDIVIDED PROFITS, REAL ESTATE, U. S. BONDS AND SECURITIES
COUNTY ON MAY 1, 1921 AND MAY 1, 1920

MAY 1, 1921

National Banks	Location	Capital, Surplus & Undivided Profits	Real Estate	Amount for Computation of Taxes	U. S. Bonds & Securities	State of Minn. Bonds & Securities
American National Bank	St. Paul	\$ 578,753.25	\$.....	\$ 578,753.25	\$ 558,917.35	\$ 13,000.00
Capital National Bank	St. Paul	1,239,432.49	450,000.10	789,432.39	1,733,113.60	43,700.00
First National Bank	St. Paul	6,649,805.85	647,587.84	6,002,218.01	3,453,665.06	315,000.00
Merchants National Bank	St. Paul	4,582,660.52	1,594,433.75	2,988,226.77	2,550,508.80	281,500.00
First National Bank	White Bear	37,306.66	4,846.00	32,460.66	33,000.00	400.00
National Exchange Bank	St. Paul	424,356.09	.....	424,356.00	369,000.00	.....
Twin Cities National Bank	St. Paul	253,738.64	34,830.00	218,908.64	254,050.00	.....
Wabash National Bank	St. Paul	243,734.71	145,000.00	98,734.71	.....	.....
Totals.....		\$14,009,788.21	\$2,876,697.69	\$11,133,090.52	\$ 8,952,254.81	\$ 653,600.00
State Banks						
Central Metropolitan Bank	St. Paul	\$ 373,872.08	\$.....	\$ 373,872.08	\$ 160,879.27	\$.....
Cherokee State Bank	St. Paul	30,000.00	4,000.00	26,000.00	250.00	.....
Citizens State Bank	St. Paul	37,500.00	.....	37,500.00	15,950.00	.....
City Bank of St. Paul	St. Paul	35,318.12	6,150.00	29,168.12	139,502.35	.....
Commercial State Bank	St. Paul	100,573.08	40,000.00	60,573.08	125,000.00	.....
Cosmopolitan State Bank	St. Paul	33,475.00	.....	33,475.00	31,650.00	.....
Dayton's Bluff State Bank	St. Paul	67,528.56	6,200.00	61,328.56	59,200.00	111,755.00
East Side State Bank	St. Paul	32,711.57	3,225.00	29,486.57	29,000.00	4,900.00
Farmers & Merchants State Bank	St. Paul	33,000.00	8,500.00	24,500.00	17,633.46	4,000.00
First State Bank	New Brighton	15,467.41	1,950.00	13,517.41	4,800.00	1,000.00
First State Bank	North St. Paul	30,000.00	3,253.27	26,746.73	4,000.00	.....
First State Bank	White Bear	42,876.00	5,000.00	37,876.00	15,775.00	300.00
Great Northern State Bank	St. Paul	50,338.34	.....	50,338.34	29,750.00	.....
Liberty State Bank	St. Paul	30,000.00	.....	30,000.00	26,000.00	8,200.00
Midway State Bank	St. Paul	31,048.40	.....	31,048.40	.....	.....
Minnesota Transfer State Bank	St. Paul	75,188.06	1,207.13	73,980.93	11,700.00	.....

DEPTS. EX. 8.

ESTATE, U. S. BONDS AND SECURITIES, AND STATE OF MINNESOTA BONDS AND SECURITIES HELD BY BANKS IN RAMSEY COUNTY ON MAY 1, 1921 AND MAY 1, 1922.

MAY 1, 1921

Amount for Computation of Taxes	U. S. Bonds & Securities	State of Minn. Bonds & Securities	Capital, Surplus & Undivided Profits
\$ 578,753.25	\$ 558,917.35	\$ 13,000.00	\$ 583,808.44
789,432.39	1,733,113.60	43,700.00	1,335,182.67
6,002,218.01	3,453,665.06	315,000.00	7,061,710.52
2,988,226.77	2,550,508.80	281,500.00	4,564,074.81
32,460.66	33,000.00	400.00	39,808.30
424,356.00	369,000.00	.....	422,523.04
218,908.64	254,050.00	.....	258,287.82
98,734.71	.....	.....	218,314.42
<u>\$11,133,090.52</u>	<u>\$ 8,952,254.81</u>	<u>\$ 653,600.00</u>	<u>\$14,483,710.02</u>

\$ 373,872.08	\$ 160,879.27	\$.....	\$ 485,146.79
26,000.00	250.00	.....	30,178.60
37,500.00	15,950.00	.....	42,450.83
29,168.12	139,502.35	.....	36,926.56
60,573.08	125,000.00	.....	108,988.91
33,475.00	31,650.00	.....	37,500.00
61,328.56	59,200.00	111,755.03	79,669.25
29,486.57	29,000.00	4,900.00	31,226.20
24,500.00	17,633.46	4,000.00	35,904.73
13,517.41	4,800.00	1,000.00	16,012.10
26,746.73	4,000.00	.....	30,000.00
37,876.00	15,775.00	300.00	43,642.10
50,338.34	29,750.00	.....	55,567.12
30,000.00	26,000.00	8,200.00	30,000.00
31,048.40	.....	.....	34,288.78
73,980.93	11,700.00	.....	82,257.18

MAY 1, 1922

Amount for Computation of Taxes	U. S. Bonds & Securities	State of Minn. Bonds & Securities
\$ 583,808.44	\$ 558,917.35	\$ 13,000.00
892,995.17	2,467,519.25	63,000.00
6,528,104.06	11,343,234.95	207,000.00
3,076,624.81	2,425,568.81	192,000.00
9,833.00	27,100.00	400.00
422,523.04	258,000.00	.....
223,457.82	260,000.00	.....
73,314.42	.....	.....
<u>\$11,810,660.76</u>	<u>\$17,340,340.36</u>	<u>\$ 475,400.00</u>

\$ 485,146.79	\$ 400,000.00	\$.....
12,000.00	1,700.00	.....
42,450.83	10,250.00	.....
11,940.87	36,067.17	.....
40,000.00	125,000.00	.....
37,500.00	8,500.00	.....
6,200.00	79,200.00	106,385.11
12,000.00	17,500.00	.....
8,500.00	17,663.96	.....
5,400.00	3,000.00	.....
12,753.27	11,500.00	.....
7,800.00	900.00	300.00
3,000.00	10,900.00	.....
30,000.00	28,000.00	41,398.63
4,016.71	.....	.....
1,238.05	81,019.13	.....

Mounds Park State Bank	St. Paul	.....	35,000.00	.....	35,000.00	87,536.47	20,500.00
Payne Avenue State Bank	St. Paul	.....	115,464.79	.....	115,464.79	35,650.00	101,000.00
Peoples State Bank	St. Paul	.....	616,380.71	230,000.00	386,380.71	227,000.00	.....
Produce Exchange Bank	St. Paul	.....	34,000.00	210.00	33,790.00	21,650.00	29,000.00
Ramsey County State Bank	St. Paul	.....	116,354.05	13,575.00	102,779.05	106,650.00	1,000.00
St. Anthony Park State Bank	St. Paul	.....	39,940.00	49,470.00	.....	15,500.00	13,000.00
St. Paul State Bank	St. Paul	.....	152,940.19	.....	152,940.19	522,439.86	45,800.00
Security State Bank	St. Paul	.....	55,300.00	14,000.00	41,300.00	54,200.00	.....
Western State Bank	St. Paul	.....	33,474.43	.....	33,474.43	21,300.00	6,000.00
Totals.....			\$ 2,217,750.79	\$ 386,740.40	\$ 1,840,540.39	\$ 1,763,016.41	\$ 346,455.03

Savings Bank & Trust Companies with Capital

Capital Trust & Savings Bank	St. Paul	.....	\$ 550,000.00	\$.....	\$ 550,000.00	\$.....	\$ 150,000.00
Central Trust & Savings Bank	St. Paul	.....	255,009.63	.....	255,009.63	.....	.....
Merchants Trust & Savings Bank	St. Paul	.....	878,581.08	.....	878,581.08	28,500.00	155,800.00
Totals.....			\$ 1,683,590.71	\$.....	\$ 1,683,590.71	\$ 28,500.00	\$ 305,800.00

RECAPITULATION OF TOTALS

National Banks	Number	8	.....	\$14,009,788.21	\$2,876,697.69	\$11,133,090.52	\$ 8,952,254.81	\$ 653,600.00
State Banks	25	.....	.....	2,217,750.79	386,740.40	1,840,540.39	1,763,016.41	346,455.03
Savings Banks & Trust Companies	3	.....	.....	1,683,590.71	.....	1,683,590.71	28,500.00	305,800.00
Grand Totals.....			.....	\$17,911,129.71	\$3,263,438.09	\$14,657,221.62	\$10,743,771.22	\$1,305,855.03

35,000.00	87,536.47	20,500.00	41,759.30	.....	41,759.30	117,042.12	42,500.00
115,464.79	35,650.00	101,000.00	115,117.74	.....	115,117.74	57,700.00	184,000.00
386,380.71	227,000.00	.....	Taken over by Central Met. Bank				
33,790.00	21,650.00	29,000.00	34,000.00	210.00	33,790.00	22,600.00	23,000.00
102,779.05	106,650.00	1,000.00	110,692.44	6,083.00	104,609.44	75,500.00	1,000.00
.....	15,500.00	13,000.00	39,550.91	10,150.00	29,400.91	49,500.00	19,000.00
152,940.19	522,439.86	45,800.00	155,621.38	.....	155,621.38	141,454.70	45,800.00
41,300.00	54,200.00	.....	60,000.00	14,000.00	46,000.00	46,100.00	.....
33,474.43	21,300.00	6,000.00	34,706.17	.....	34,706.17	21,300.00	7,000.00
<u>\$ 1,840,540.39</u>	<u>\$ 1,763,016.41</u>	<u>\$ 346,455.03</u>	<u>\$ 1,771,207.09</u>	<u>\$ 155,291.90</u>	<u>\$ 1,615,915.19</u>	<u>\$ 1,280,477.95</u>	<u>\$ 470,383.74</u>

7

\$ 550,000.00	\$.....	\$ 150,000.00	\$ 535,726.11	\$ 34,529.87	\$ 501,196.24	\$.....	\$ 150,000.00
255,009.63	.....	.....	273,203.63	.....	273,203.63	.....	.....
878,581.08	28,500.00	155,800.00	981,627.65	.....	981,627.65	45,850.00	42,244.64
<u>\$ 1,683,590.71</u>	<u>\$ 28,500.00</u>	<u>\$ 305,800.00</u>	<u>\$ 1,790,557.39</u>	<u>\$ 34,529.87</u>	<u>\$ 1,756,027.52</u>	<u>\$ 45,850.00</u>	<u>\$ 192,244.64</u>

CAPITULATION OF TOTALS

\$11,133,090.52	\$ 8,952,254.81	\$ 653,600.00	\$14,483,710.02	\$2,673,049.26	\$11,810,660.76	\$17,340,340.36	\$ 475,400.00
1,840,540.39	1,763,016.41	346,455.03	1,771,207.09	155,291.90	1,615,915.19	1,280,477.95	470,383.74
1,683,590.71	28,500.00	305,800.00	1,790,557.39	34,529.87	1,756,027.52	45,850.00	192,244.64
<u>\$14,657,221.62</u>	<u>\$10,743,771.22</u>	<u>\$1,305,855.03</u>	<u>\$18,045,474.50</u>	<u>\$2,862,871.03</u>	<u>\$15,182,603.47</u>	<u>\$18,666,668.31</u>	<u>\$1,138,028.38</u>

DEFTS. EX. T.

COMPARATIVE STATEMENT SHOWING CONDITION OF THE FIRST NATIONAL BANK
OF ST. PAUL MAY 1, 1921 AND MAY 1, 1922.

Resources	May 1, 1921	May 1, 1922
Loans and Discounts		
Overdrafts	\$30,459,384.24	\$26,489,898.41
Customers Liability Account of Acceptances	8,007.80	2,709.96
U. S. Government Securities Owned	3,453,665.06	11,343,234.95
Other Bonds, Stocks and Securities	1,428,272.84	2,710,730.03
Banking House Furniture and Fixtures	556,199.42	533,606.46
Other Real Estate Owned		
Lawful Reserve with Federal Reserve Bank	2,118,449.30	2,786,649.41
Items with Federal Reserve Bank for Collection	848,206.55	426,459.97
Cash and Amount Due from National Banks	4,777,046.45	5,828,689.21
Amount Due from State Banks & Trust Companies	1,691,372.73	2,177,737.15
Exchanges for Clearing House	627,612.48	524,821.58
Checks on other Banks in Same Place	192,384.40	187,943.62
Outside Checks and Cash Items	384,768.82	375,887.25
Redemption Fund		
Other Assets	26,375.12	72,762.34
Total Resources	\$46,571,745.21	\$53,461,130.34
Liabilities		
Capital Stock Paid In		
Surplus	\$ 3,000,000.00	\$ 3,000,000.00
Undivided Profits, less Expenses, Interest and Taxes	2,000,000.00	2,000,000.00
National Bank Notes Outstanding	1,371,847.48	1,394,585.04
Amount Due Federal Reserve Bank		
Amount Due National Banks	4,379,197.01	5,311,484.91
Amount Due State Banks, Bankers & Trust Companies	4,127,603.59	4,954,331.39
Certified Checks Outstanding	44,000.86	27,591.07
Cashier Checks outstanding	182,771.71	188,650.54
Demand Deposits	21,039,275.61	28,547,906.22
Time Deposits	5,635,010.50	5,683,908.56
U. S. Deposits	1,386,419.16	1,606,680.56
U. S. Bonds Borrowed	2,693,500.00	
Other Bonds and Securities Borrowed		
Bills Payable and Rediscounts		
Letters of Credit & Travelers checks issued for cash		
Acceptances executed for customers		
Acceptances executed by other banks		
Other Liabilities	712,119.29	745,993.05
Total Liabilities	\$46,571,745.21	\$53,461,130.34
Total Capital Surplus & Undivided Profits	\$ 6,371,817.48	\$ 6,394,585.04
Total Banking House Furniture and Fixtures	556,199.42	533,606.46
Total U. S. Bonds and Securities	3,453,665.06	11,343,234.95
Total other Bonds, Stocks and Securities	1,428,272.84	2,710,730.03
Total Deposits	36,794,278.44	46,320,552.25

STATE'S EXHIBIT 2.

(pages 42-46 inclusive.)

BANKS.

33. INCORPORATED BANKS—The stock of every bank and mortgage loan company in this state, organized under the laws of this state or of the United States, shall be assessed and taxed in the town, city or village where such bank or mortgage loan company is located, whether the stockholders of such bank reside in such place or not, and shall be assessed in the name of the bank or mortgage loan company. The cashier, or other officer of the bank or mortgage loan company, shall list all shares of the bank or mortgage loan company for assessment, in the same manner as the general property of the bank or mortgage loan company is listed. To aid the assessor in determining the value of such shares of stock, the accounting officer of every such bank or mortgage loan company shall furnish to the assessor a sworn statement showing the amount and number of the shares of the capital stock, the amount of its surplus or reserve fund and amount of its legally authorized investments in real estate, which shall be assessed and taxed as other real estate under this chapter. The assessor shall deduct the amount of investments in real estate from the aggregate amount of such capital and surplus fund, and the remainder shall be taken as a basis for the valuation of such shares in the hands of the stockholders subject to the provisions of the law requiring all property to be assessed at its true and full value. The shares of capital stock of corporate banks not located in this state, held in this state, shall not be required to be listed under this chapter, but

shall be listed by and assessed to the owner of such stock. ('50 c. 60 sec. 1). (2018).

Q. How are banks assessed?

A. Banks are assessed on the value of their shares of stock. Such value is determined by adding together the capital, surplus, and undivided profits and deducting the legally authorized investments in real estate from the total of such items, the real estate being separately assessed. The remainder is to be taken as the value of the shares of stock and the assessments extended at 40 per cent. thereof. (Item 55, Class 4.)

Q. Why is the personal property assessment of a bank based on the value of its shares of stock, less the value of real estate holdings?

A. The value of the shares of stock represents the value of the entire property of the bank, each share representing a proportional interest in the corporate holdings. Because real estate owned by a bank is assessed separately as such, therefore in determining the value of the shares of stock taxable as personal property, it is necessary to deduct from the total value of such shares as represented by the capital, surplus and undivided profits, the value of real estate. Otherwise there would be double taxation on such portion of the value of the shares as is represented by the corporate holdings of real estate.

Q. When does a bank become subject to taxation?

A. Immediately upon the filing of its articles of incorporation with the secretary of state, even though the bank does not commence business until a later date.

Right to tax national banks.

Q. Can the state tax shares of stock in a national bank located within the state?

A. Yes, subject to the federal statutes which provide that such tax shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state, and that the tax must be assessed only where the national bank is located.

Q. Can a resident of Minnesota be taxed on the shares of stock he owns in a national bank located outside of this state?

A. No. As stated above under the act of congress permitting the taxation of the shares of stock of national banks by the states the assessment only can be made where the bank is located.

Q. In making the sworn statement to the assessor as required by section 2018, G. S. 1913, can a bank deduct bonds, certificates of indebtedness and other securities in which it has invested, from the aggregate of its capital, surplus and undivided profits?

A. No. Only the legally authorized investments of the bank in Minnesota real estate can be deducted.

Q. Is the interest which a bank acquired by reason of the purchase of real estate at a mortgage foreclosure sale an "investment in real estate" which is authorized to be deducted from the capital, surplus and undivided profits for the purpose of determining the taxable value of the bank stock?

A. No, not unless complete title is acquired. By investment in real estate is meant ownership in fee.

Only one deduction.

Q. Can a bank deduct as real estate from its capital, surplus and undivided profits the value of land upon which it has security for a loan in the form of a warranty deed?

A. No. The fee owner and not the bank holding the deed pays taxes on such real estate.

Q. In determining the value of bank stock for purposes of taxation should the value of United States bonds owned by the bank be deducted?

A. The only deductions permitted are the legally authorized investments of the bank in Minnesota real estate.

Q. Should unpaid balances on a land contract be considered as an investment in real estate in determining the value of the shares of stock of a bank for the purposes of taxation?

A. No, and no deductions can be made for such unpaid balances.

Q. In making its return for taxation can a bank deduct from the aggregate of its capital, surplus and undivided profits the value of land sold by it on contract?

A. No. Land so sold is not a "legally authorized investment in real estate."

Q. Can a bank deduct from the aggregate of its capital, surplus and undivided profits the amount of its investments in real estate outside the state of Minnesota?

A. No. The term "legally authorized investment in real estate" does not include investments in real estate located in other states or countries.

Stock in reserve bank.

Q. Can a bank deduct from the aggregate of its capital, surplus and undivided profits the amount of its investment in the stock of the federal reserve bank?

A. No. Only legally authorized investments in real estate can be deducted.

Q. Can furniture, desks, fixtures, etc., used by a bank in its business be assessed as personal property?

A. No. Their value is included in capital stock, surplus and undivided profits unless the amount invested in such property has been charged off and in that event it should be assessed separately. This condition, however, seldom exists.

Deposits not owned by banks.

Q. Can the deposits held by a bank be assessed against the bank?

A. No. The deposits are the property of the depositors and not of the bank and are assessable against the owners thereof as money. It is immaterial that the money deposited has been loaned by the bank.

Q. Is there any limitation on the amount a state bank may invest in real estate?

A. No, but not more than 25 per cent of its capital and surplus may be invested in the banking house occupied by it.

34. BANKS—LIST OF STOCKHOLDERS—In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders or owners or parties interested therein showing the number of shares, and the amount held, owned, or controlled by each party in interest, which list shall be subject to the inspection of the officers authorized to access property for taxation, and the accounting officer of each bank or banking institution shall furnish to the assessor a duplicate copy of such list, verified by oath, which shall be returned and filed with the county auditor. (2019)

Q. May a trust company taxed under this law deduct the interest received from Minnesota municipal bonds or United States government bonds from its gross earnings?

A. No. The tax is "in lieu of all taxes and assessments

upon the capital stock and the personal property of such trust company," and therefore is not a tax on exempt federal or state securities, but a tax on the value of the shares of stock, the same as the tax on other bank stock.

Q. May a trust company deduct interest paid in reporting its gross earnings?

A. No.

35. **BANKS WITHOUT STOCK**—The accounting officer of every bank whose capital is not represented by shares of stock, * * * when listing personal property, shall also make out and deliver to the assessor a sworn statement showing:

- (1) The amount of money on hand or in transit.
- (2) The amount of funds in the hands of other banks, brokers, or others subject to draft.
- (3) The amount of checks or cash items not included in either of the preceding items.
- (4) The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.
- (5) The amount of bonds and stocks of every kind (except United States bonds), and shares of capital stock of Joint stock or other companies or corporations held as an investment, or in any way representing assets.
- (6) All other property appertaining to said business, other than real estate, which shall be listed and assessed as other real estate, under this chapter.
- (7) The amount of all deposits made with them by other persons.

- (8) The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, and fourth items, and the remainder, if any, shall be listed as money, under (R. L.) Sec. 835, subd. 19*. The amount of the fifth item shall be listed as bonds and stock under said section, and the sixth item shall be listed the same as other similar personal property is listed under this chapter, except that, in case of savings banks organized under the general laws of this state, the amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, fourth, fifth, and sixth items, and the remainder, if any, shall be listed as credits, according to the provisions of (R. L.) Sec. 835. (2016)

**Note*—Money and credits are now listed on a separate blank under the provisions of sections 44-59 of this manual.

36. TRUST COMPANIES RECEIVING DEPOSITS SUBJECT TO CHECK—On or before March 1, of each year every trust company organized under the laws of this state shall pay into the county treasury of the county where its principle place of business is located five (5) per cent of its gross earnings for the preceding calendar year, which amount shall be in lieu of all taxes and assessments upon the capital stock and the personal property of such trust company; provided, however, that if any such company shall receive deposits subject to check other than trust deposits, that then such company shall be assessed in the same manner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks. ('13 c. 529 Sec. 1) (2268)

STATE'S EXHIBIT 3.

(pages 44-48 inclusive)

BANKS.

33. INCORPORATED BANKS—The shares of stock of every bank in this state organized under the laws of the United States, and the moneyed capital of every bank or mortgage loan company organized under the laws of this state shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located.

The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and the taxes levied thereon shall be paid by such bank as agent of the stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this state shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company.

To aid the assessor in determining the value of the shares of stock of national banks and the value of the moneyed capital of state banks and mortgage loan companies, the cashier or other accounting officer of every such bank or mortgage loan company shall furnish a sworn statement to the assessor, showing the amount and number of shares of the capital stock, the amount of its surplus, undivided profits and all other funds, and the amount of its legally authorized

investments in real estate located in this state, which real estate shall be assessed and taxed in the same manner as other real estate. The assessor shall deduct the amount of such legally authorized investments in real estate from the aggregate amount of such capital, surplus, undivided profits, and other funds, and the remainder shall be taken as a basis for determining the taxable value of the shares of stock of banks organized under the laws of the United States and of the moneyed capital of banks and mortgage loan companies organized under the laws of this state.

To secure the payment of taxes levied against the stockholders of banks organized under the laws of the United States every such bank shall, before declaring any dividend, deduct from the annual earnings of the bank such amount as may be necessary to pay any such taxes so levied against such stockholders, and such bank or the officers thereof shall pay the taxes and shall be authorized to charge the amount thereof to the expense account of such bank. ('21c. 416.)

Q. How are banks assessed?

A. Banks are assessed on the value of their shares of stock. Such value is determined by adding together the capital, surplus and undivided profits and deducting the legally authorized investments in real estate from the total of such items, the real estate being separately assessed. The remainder is to be taken as the value of the shares of stock, and the assessments extended at 40 per cent, thereof. (Item 55, Class 4.)

Q. Why is the personal property assessment of a bank based on the value of its shares of stock, less the value of real estate holdings?

A. The value of the shares of stock represents the value of the entire property of the bank, each share representing

a proportional interest in the corporate holdings. Because real estate owned by a bank is assessed separately as such, therefore in determining the value of the shares of stock taxable as personal property, it is necessary to deduct from the total value of such shares as represented by the capital, surplus and undivided profits, the value of real estate. Otherwise there would be double taxation on such portion of the value of the shares as is represented by the corporate holdings of real estate.

Q. When does a bank become subject to taxation?

A. Immediately upon the filing of its articles of incorporation with the secretary of state, even though the bank does not commence business until a later date.

Right to tax national banks.

Q. Can you state tax shares of stock in a national bank located within the state?

A. Yes, subject to the federal statutes which provide that such tax shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state, and that the tax must be assessed only where the national bank is located.

Q. Can a resident of Minnesota be taxed on the shares of stock he owns in a national bank located outside of this state?

A. No. As stated above under the act of congress permitting the taxation of the shares of stock of national banks by the states the assessment only can be made where the bank is located.

Q. In making the sworn statement to the assessor as required by section 2018, G. S. 1913, can a bank deduct bonds, certificates of indebtedness and other securities in which it has invested, from the aggregate of its capital, surplus and undivided profits?

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Q. Should unpaid balances on a land contract be considered as an investment in real estate in determining the value of the shares of stock of a bank for the purposes of taxation?

A. No, and no deductions can be made for such unpaid balances.

Q. In making its return for taxation can a bank deduct from the aggregate of its capital, surplus and undivided profits the value of land sold by it on contract?

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A. No. The term "legally authorized investment in real estate" does not include investments in real estate located in other states or countries.

Stock in reserve bank.

Q. Can a bank deduct from the aggregate of its capital, surplus and undivided profits the amount of its investment in the stock of the federal reserve bank?

A. No. Only legally authorized investments in real estate can be conducted.

Q. Can furniture, desks, fixtures, etc., used by a bank in its business be assessed as personal property?

A. No. Their value is included in capital stock, surplus and undivided profits unless the amount invested in such property has been charged off and in that event it should be assessed separately. This condition, however, seldom exists.

Deposits not owned by banks.

Q. Can the deposits held by a bank be assessed against the bank?

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Q. Is there any limitation on the amount a state bank may invest in real estate?

A. No, but not more than 25 per cent of its capital and surplus may be invested in the banking house occupied by it.

34. **BANKS—LIST OF STOCKHOLDERS**—In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders or owners or parties interested therein, showing the number of shares, and the amount held, owned, or controlled by each party in interest, which list shall be subject to the inspection of the officers authorized to assess property for taxation, and the accounting officer of each bank or banking institution shall furnish to the assessor a duplicate copy of such list, verified by oath, which shall be returned and filed with the county auditor. (2019).

35. **BANKS WITHOUT STOCK**—The accounting officer of every bank whose capital is not represented by shares of stock * * * when listing personal property, shall also make out and deliver to the assessor a sworn statement showing:

- (1) The amount of money on hand or in transit.
- (2) The amount of funds in the hands of other banks, brokers, or others subject to draft.
- (3) The amount of checks or cash items not included in either of the preceding items.
- (4) The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.
- (5) The amount of bonds and stocks of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.
- (6) All other property appertaining to said business, other than real estate, which shall be listed and assessed as other real estate under this chapter.

(7) The amount of all deposits made with them by other persons.

(8) The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, and fourth items, and the remainder, if any, shall be listed as money, under (R. L.) Sec. 835, subd. 19*. The amount of the fifth item shall be listed as bonds and stock under said section, and the sixth item shall be listed the same as other similar personal property is listed under this chapter, except that, in case of savings banks organized under the general laws of this state, the amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, fourth, fifth, and sixth items, and the remainder, if any, shall be listed as credits, according to the provisions of (R. L.) Sec. 835. (2016)

36. TRUST COMPANIES RECEIVING DEPOSITS SUBJECT TO CHECK—On or before March 1, of each year every trust company organized under the laws of this state shall pay into the county treasury of the county where its principal place of business is located five (5) per cent of its gross earnings for the preceding calendar year, which amount shall be in lieu of all taxes and assessments upon the capital stock and the personal property of such trust company; provided, however, that if any such company shall receive deposits subject to check other than trust deposits, that then such company shall be assessed in the same manner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks. ('13 c. 529 Sec. 1) (20268).

Q. May a trust company taxed under this law deduct the interest received from Minnesota municipal bonds or United States government bonds from its gross earnings?

**Note*—Money and credits are now listed on a separate blank under the provisions of sections 44-59 of this manuel.

A. No. The tax is "in lieu of all taxes and assessments upon the capital stock and the personal property of such trust company," and therefore is not a tax on exempt federal or state securities, but a tax on the value of the shares of stock, the same as the tax on other bank stock.

Q. May a trust company deduct interest paid in reporting its gross earnings?

A. No.

STATE'S EXHIBIT 4.

(pages 193-195 Inclusive)

CONCLUSIONS OF THE TAX COMMISSION.

The outcome of the commission's investigations is substantially this: The attempt to tax money, credits and securities at the same rate as other classes of property has everywhere and always proved a failure. In our American states the result has been that the assessment of intangible property decreases either absolutely or relatively as wealth and population increase. We can find no exception to this general rule, and are forced to the conclusion that our present laws are at this point fundamentally wrong. Upon the other hand, it appears that two states have met with reasonable success in administering a uniform tax of moderate amount upon intangible property; and the conclusion seems inevitable that if Minnesota would tax this class of property on a plan similar to that now in operation in Pennsylvania and Maryland more revenue would be obtained with much less friction and hardship than at present.

The rate of tax which should be imposed on intangible property has been the subject of careful consideration. In Pennsylvania, as already stated, the rate is 4 mills (\$4 per \$1,000); in Maryland it is approximately 4.6 mills (\$4.60 per \$1,000). The Massachusetts commission considered these rates too high and recommended a 3 mill rate. We believe that in this matter we should be guided by the experience of other countries in taxing the income from this class of property. That experience shows that a direct tax exceeding 6 per cent of the taxpayer's income is regarded as a heavy burden and that as a rate approaches 10 per cent it leads to evasion. A tax of 4 mills upon each dollar of the valuation amounts to $6\frac{2}{3}$ per cent of the income from a security that yields the investor 6 per cent interest; it is 8 per cent of the income from an investment yielding 5 per cent interest; and is 10 per cent of the income from an investment yielding 4 per cent interest. This is as high a rate as we think that Minnesota could successfully impose upon a class of property the assessment of which requires the co-operation and the good will of the tax payer.

It is to be remembered that with us the tax will be assessed by local assessors. Even with such supervision as the commission can give, it is not to be supposed that we can be more successful in taxing intangible property than European governments having a highly trained civil service which is subject to strict central control. Under such conditions our tax rate should be less rather than more than the rates which those governments impose upon incomes; and the commission is confident that in the long run a tax of 4 mills will produce more revenue than a tax levied at higher rates.

A further consideration is that no small part of intangible property represents tangible property which has already been taxed either in this state or elsewhere, so that to

some extent the tax of 4 mills involves double taxation. This fact obviously affects the attitude of the taxpayer and makes it all the more desirable that our proposed tax should not be too high. •

With a rate of 4 mills, we believe that the average citizen of Minnesota will cheerfully submit to taxation upon intangible property. There are doubtless in every community some persons who will try to evade any tax, however reasonable it may be; but we cannot believe that they represent the attitude of the average citizen. The experience of Pennsylvania and Maryland points to the same conclusion. No form of personal taxation can be wholly free from evasion; but the commission believes that a reasonable tax, even on intangible property, can be successfully administered in Minnesota. With a fixed rate of 4 mills, no man's tax will be larger because his neighbor evades taxation. Widows and orphans will not be compelled to contribute one-third or one-half of their income. Our assessors, when they discover taxable property, can enforce the law without feeling that they are imposing an odious and confiscatory tax. Public sentiment will heartily support the law, and tax-dodging will become unfashionable, greatly to the advantage of public and private morality. Indeed, if the tax was low enough so that large holders of such property would not be tempted for that reason to leave the state, there would be no injustice in providing that all such property not listed for taxation should be uncollectible in the courts. Such a plan would place all of the risk of evasion on the shoulder of the tax dodger, where it properly belongs, and would place a premium on honesty rather than upon dishonesty.

After a most careful investigation of the whole subject, the tax commission is convinced that the change suggested would be a long step in the right direction, but we do not

believe that so radical a departure from existing conditions should be made without the widest discussion and the fullest understanding of the whole subject by the taxpayers of the state.

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STATE'S EXHIBIT 4 CONTINUED

(page 305)

CHAPTER XXIV

RECOMMENDATIONS.

The tax commission recommends that the following changes be made in the taxing system and tax laws of the state:

• • • • •

9. That money, credits and other intangible property be taxed at a flat rate of 4 mills on the dollar. See Chapter XVII.



STATE'S EX. 5.

Statement of Amount of Assessment and Taxes
Levied on Money and Credits for the
Years 1907 to 1923 inclusive.

For the Entire State

Year	Number Assessed	Amount of Assessment	Rate of Tax in Mills	Amount of Tax
1907		\$ 18,559,999	25.91	\$ 480,864
1908		14,617,763	26.98	395,197
1909		13,244,942	27.79	368,077
1910	† 6,200	13,919,806	28.	379,754
1911	41,439	115,676,126	3	347,025
1912	50,564	134,826,568	3	404,477
1913	57,068	156,252,274	3	468,760
1914	73,266	197,625,914	3	592,878
1915	73,062	213,078,632	3	639,249
1916	74,219	223,858,138	3	671,831**
1917	87,688	285,662,756	3	856,993
1918	98,502	330,270,597	3	991,446
1919	109,215	359,112,619	3	1,079,973
1920	127,471	443,092,869	3	1,329,365
1921	118,846	425,745,839	3	1,277,242
1922	109,081	400,960,331	3	1,202,878
*1923	113,007	413,322,619	3	1,239,968

*1923 figures based upon assessment as returned by the County Auditors of various counties.

**In addition to sum named increase of \$8,373,471 tax \$25,117 on estate of J. J. Hill was made.

†Estimated.

For Ramsey County

Year	Number Assessed	Amount of Assessment	Rate of Tax in Mills	Amount of Tax
1907		\$ 1,382,813	29.25	\$ 40,447
1908		849,692	32.20	27,360
1909		991,671	33.49	33,211
1910		2,756,850	30.20	83,251
1911	2,848	24,410,381	3	72,231
1912	3,152	25,595,161	3	76,785
1913	3,771	34,571,164	3	103,714
1914	4,550	41,860,131	3	125,580
1915	4,872	43,352,616	3	130,058
1916	5,130	48,704,976	3	146,115**
1917	5,134	62,641,448	3	187,924
1918	6,173	72,337,666	3	217,013
1919	7,028	76,867,049	3	230,601
1920	7,803	90,788,455	3	272,365
1921	7,233	84,093,488	3	252,281
1922	7,660	83,601,268	3	250,804
*1923	8,051	88,640,550	3	265,922

*1923 figures based upon assessment as returned by the County Auditors of various counties.

**In addition to sum named an increase of \$8,373,471 tax \$25,117 on the estate of J. J. Hill was made.

STATE'S EX. 6.

Statement showing the total amount of the general property tax levies in Ramsey county for the years 1907 to 1922, inclusive, the amount of taxes levied on shares of National Banks in said county during the same period, and percentages that the amount of such personal property tax on said National bank bears to the whole for each of said years.

	Total Amount of Tax Levy Ramsey Co.	Amount of P. P. Tax National Banks	Percent of Total Tax
1907	\$ 3,206,384	\$ 85,315	2.66
1908	3,524,280	101,747	2.89
1909	3,940,326	105,425	2.68
1910	3,894,950	102,873	2.64
1911	4,017,092	106,095	2.64
1912	4,095,459	109,965	2.69
1913	4,884,358	170,931	3.50
1914	5,079,493	186,272	3.67
1915	5,824,651	194,425	3.33
1916	5,781,793	156,776	2.71
1917	5,993,339	174,694	2.92
1918	6,558,505	194,512	2.97
1919	8,858,040	283,836	3.20
1920	11,528,921	301,065	2.61
1921	10,743,064	294,219	2.74
1922	9,701,457	285,070	2.94

STATE'S EX. 7.

STATEMENT OF AMOUNT OF STATE TAXES FOR THE YEARS 1907 TO 1922 BOTH INCLUSIVE, FROM ALL SOURCES, TOGETHER WITH
PERIOD, AND PERCENTAGES THE AMOUNTS PAID BY BANKS BEAR TO T

	For 1907 Dollars	For 1908 Dollars	For 1909 Dollars	For 1910 Dollars	For 1911 Dollars	For 1912 Dollars	For 1913 Dollars	For 1914 Dollars
General Property Tax	\$3,647,743	\$3,546,447	\$3,105,634	\$3,228,038	\$4,766,524	\$ 4,867,427	\$ 6,974,680	\$ 7,115,708
GROSS EARNINGS TAXES:								
Railroad Companies	3,425,305	2,972,793	4,458,912	3,933,310	3,738,701	4,325,508	5,775,513	5,004,791
Telephone Companies	103,054	122,917	163,259	155,708	166,515	184,645	220,298	245,330
Express Companies	31,090	32,908	37,012	37,290	63,856	59,325	64,198	51,312
Sleeping Car Companies.....	6,057	6,340	7,362	9,372	10,274	9,741	12,745	4,511
Freight Line Companies	2,261	1,973	4,753	4,058	4,131	9,065	9,903	7,861
Inheritance Taxes	43,455	215,093	508,882	459,406	678,513	437,262	650,757	1,142,539
Insurance Company Taxes	365,294	370,665	382,419	411,752	413,260	443,235	457,873	488,429
Telegraph Company Taxes	21,610	41,992	21,916	125,222	36,450	39,150	37,800	41,300
Vessel Tonnage Taxes	16,320	17,252	21,814	19,572	15,075	24,729	19,353	20,777
Liquor License Taxes	34,579	67,201	53,753	54,613	47,843	48,848	53,146	38,976
Fire Marshal Taxes .....	.....	.....	.....	.....	.....	.....	28,978	29,366
Tax on Grain Handled .....	.....	.....	.....	.....	.....	.....	.....	.....
Motor Vehicle Taxes .....	.....	.....	.....	.....	.....	.....	.....	.....
Totals	\$7,696,768	\$7,395,581	\$8,765,716	\$8,438,341	\$9,941,142	\$10,448,935	\$14,305,244	\$14,190,900
Amount of State Tax on National Banks.....	\$ 48,768	\$ 50,113	\$ 43,876	\$ 45,834	\$ 67,708	\$ 64,309	\$ 101,563	\$ 81,831
Percentage of Total State Tax .....	.634	.678	.500	.543	.681	.615	.710	.577
Amount of State Tax on State Banks	18,379	18,009	14,447	15,161	23,224	23,186	39,659	33,620
Percentage of Total State Tax.....	.239	.244	.165	.180	.234	.222	.277	.237

STATE'S EX. 7.

YE, FROM ALL SOURCES, TOGETHER WITH AMOUNT OF STATE TAXES PAID BY NATIONAL AND STATE BANKS FOR THE SAME
 HE AMOUNTS PAID BY BANKS BEAR TO THE WHOLE FOR EACH YEAR.

For 1911 Dollars	For 1912 Dollars	For 1913 Dollars	For 1914 Dollars	For 1915 Dollars	For 1916 Dollars	For 1917 Dollars	For 1918 Dollars	For 1919 Dollars	For 1920 Dollars	For 1921 Dollars	For 1922 Dollars
\$4,766,524	\$ 4,867,427	\$ 6,974,680	\$ 7,115,708	\$ 6,283,094	\$ 5,943,940	\$ 8,430,355	\$ 6,272,265	\$14,581,238	\$11,560,892	\$ 8,829,542	\$ 8,335,255
3,738,701	4,325,508	5,775,513	5,004,791	5,436,573	6,144,023	6,237,571	7,532,181	7,744,310	9,062,652	7,300,568	7,641,049
166,515	184,645	220,298	245,330	251,206	275,706	298,648	310,253	358,831	423,012	471,590	658,027
63,856	59,325	64,198	51,312	51,820	58,193	62,237	74,196	105,157	129,613	115,382	81,651
10,274	9,741	12,745	4,511	24,279	29,477	31,808	30,728	41,851	82,061	52,426	60,331
4,131	9,065	9,903	7,861	19,677	11,221	8,869	51,825	21,718	21,975	28,446	30,052
678,513	437,262	650,757	1,142,539	672,814	2,594,488	873,123	683,608	1,056,687	1,074,039	966,539	1,502,185
413,260	443,235	457,873	488,429	508,823	548,911	620,935	690,515	861,393	1,075,845	1,105,539	1,112,171
36,450	39,150	37,800	41,300	19,116	21,028	23,800	26,495	29,439	33,119	35,887	35,887
15,075	24,729	19,353	20,777	17,171	19,047	19,643	2,934	54,805	5,903	28,571	48,415
47,843	48,848	53,146	38,976	43,533	38,348	25,622	11,772	.....	.....	.....	.....
.....	.....	28,978	29,366	29,565	30,826	34,116	38,970	45,308	54,938	46,113	49,543
.....	.....	.....	.....	.....	.....	.....	.....	110,663	67,924	67,663	77,297
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,616,114	6,509,006
\$9,941,142	\$10,448,935	\$14,305,244	\$14,190,900	\$13,357,671	\$15,715,208	\$16,666,727	\$15,725,742	\$25,011,400	\$23,591,973	\$24,664,380	\$26,140,869
\$ 67,708	\$ 64,309	\$ 101,563	\$ 81,831	\$ 63,234	\$ 67,111	\$ 93,950	\$ 69,132	\$ 165,966	\$ 117,764	\$ 102,488	\$ 100,405
.681	.615	.710	.577	.473	.427	.564	.440	.664	.499	.416	.384
23,224	23,186	39,659	33,620	32,543	31,729	47,690	34,763	85,203	65,162	50,200	44,955
.234	.222	.277	.237	.244	.202	.209	.221	.341	.276	.204	.172

STATE'S EX. 8.

ASSESSMENT BY ITEMS OF MONEY AND CREDITS FOR RAMSEY COUNTY IN 1919

Items	Per Cent of Total	Assessor's Valuation
1. Money subject to check and on deposit in banks, trust companies, or similar financial institutions, wherever situate..	19.73	\$15,017,249
2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks, or similar instruments.....	1.52	1,155,595
3. Money, other than above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere .....	.60	458,825
4. Promissory notes, bills of exchange, due bills, cream checks, and similar evidences of indebtedness	8.11	6,170,600
5. Bonds, except municipal and United States bonds and such as are secured by real estate mortgages recorded in this state..	9.60	7,307,235
6. Real estate mortgages upon lands situate outside of this state and amount secured thereby	4.67	3,553,500
7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby.....	.22	170,665
8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby.....	1.42	1,078,385
9. Judgments in this state or elsewhere.....	.25	187,260
10. Book accounts	43.27	32,922,750
11. Contracts for sale of real estate outside of this state.....	.62	467,765
12. Contracts for sale of real estate in this state which have not been recorded .....	.28	216,030
13. Annuities, royalties, and all sums of money receivable at stated periods .....	.20	154,645
14. All claims and demands for money or other valuable thing not above enumerated .....	.32	243,410
15. Shares of stock in corporations the property of which is not assessed or taxed in this state	9.19	6,989,510
Total		<u>\$76,093,424</u>

IN SUPREME COURT OF THE UNITED STATES

STIPULATION TO AMEND RECORD—Filed November 30, 1925

It is hereby stipulated by and between the parties to the above entitled proceeding, that the record and return herein may be amended so as to include the judgment of the Supreme Court of Minnesota, entered in the above entitled action on the 25th day of November, 1925, and that said amendment may be effected by forwarding to the clerk of the United States Supreme Court, a certified copy of said judgment.

It is further stipulated that the proceedings may stand as originally docketed, and that the petition may be heard upon the record as so amended, and upon the petition and brief heretofore filed herein.

Dated this 27th day of November, 1925.

Clifford L. Hilton, Attorney General, State of Minnesota; G. A. Youngquist, Assistant Attorney General; Harry H. Peterson, County Attorney, Ramsey County; Roy A. Macdonald, Assistant County Attorney; Patrick J. Ryan, Attorneys for Petitioner. Thomas D. O'Brien, Alexander E. Horn, Edward S. Stringer, Attorneys for Respondent.

[File endorsement omitted.]

IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 14, 1925

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

STATE OF MINNESOTA,

Petitioner.

—vs—

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
DIRECTED TO THE SUPREME COURT
OF THE STATE OF MINNESOTA**

PETITION FOR WRIT OF CERTIORARI

—and—

BRIEF IN SUPPORT THEREOF

CLIFFORD L. HILTON,

Attorney General.

G. A. YOUNGQUIST,

Assistant Attorney General.

HARRY H. PETERSON,

County Attorney.

ROY A. McDONALD,

Assistant County Attorney.

PATRICK J. EVAN,

For Petitioner.

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SUPREME COURT of the UNITED STATES

STATE OF MINNESOTA,

Petitioner.

—VS—

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPREME COURT OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice of the
United States, and the Associate Justices
of the Supreme Court of the United States.

Your petitioner respectfully states and shows to the court
as follows:

In 1921 and 1922 the Respondent, First National Bank
of St. Paul, refused to pay taxes assessed against its share-
holders in the amounts, \$160,857.54, and \$160,591.26, re-
spectively. These taxes were assessed in the same manner
as they had been for half a century. All other National
Banks in Minnesota, except two, both small banks, paid
taxes assessed under the same system in both years.

The objection was that shares of National Banks were as-
sessed on an ad valorem basis which resulted in applying
to 40% of the value of their shares, the current general
tax rate applicable to all real and tangible personal prop-

erty in the several taxing districts of the State, while money and credits were taxed, under a law in force since 1911, at a flat three mill rate. Other objections, not sustained, were that real estate mortgages were subjected to a registry tax not higher than 25c per hundred dollars on the debt secured, under a law in force since 1907, and Trust Companies were assessed on a gross earnings basis, under a law in force since 1913. It was further contended that the system of taxing state banks worked a discrimination against National Banks.

The ad valorem rate applicable to bank shares was 67 mills in Ramsey County for the year 1921 and 61.5 mills in 1922.

It was claimed that these laws affecting money and credits, real estate mortgages, trust companies and state banks operated to tax competing moneyed capital in the hands of individual citizens of Ramsey County and of Minnesota at a lower rate than taxes on shares of Respondent Bank in violation of Section 5219, Rev. Stat., U. S.

The decision of the Supreme Court of the State of which review is sought, insofar as it is in favor of the Respondent Bank, is based solely upon the workings of the Money and Credits Tax Law, of 1911. We, therefore, assume that this petition should deal only with the ruling on that objection.

The proof was that the Act taxing all money and credits at the fixed rate of 3 mills on each dollar of value was adopted in 1911 because the State had wholly failed, as had every other State before and since, in its efforts to collect taxes on any appreciable amount of money and credits. The plan of the law was to recognize the inability of the State to tax such property, to place a low flat tax rate on such money and credits as taxpayers would list, making the listing binding on assessors, and thereby en-

courage voluntary disclosures of such property in such amounts as to increase revenue therefrom. Such a plan had been tried successfully in other States, notably Maryland. National Banks had contended that the Maryland law was in violation of Section 5219, but the Circuit Court of Appeals in an impressive opinion, (*National Bank vs. Mayor of Baltimore*, 100 Fed. 24) had held otherwise. Upon this experience and at the instigation of the State Tax Commission, the law was adopted and went into effect in the year of its enactment. Revenues from this class of property almost immediately increased in Ramsey County, in which St. Paul is situated, and over the whole State, and continuously since then such revenues have increased, not only actually, but their increase has kept pace with increases in revenues from other property and from shares of National Banks.

There was further proof that fairly compared there was no actual difference in tax burdens—in the actual out-of-pocket results,—between the Money and Credits Tax and the tax on shares of National Banks, although the rates were widely different. It is sufficient here to say that this results from the fact that corporations and individuals are taxed on the full value of their money and credits while shareholders of National Banks are taxed on 40% of the book value of their shares, but mainly it occurs because individuals and corporations are taxed on such full value without offsets for debts or liabilities while in the system applicable to shares there inheres taxation of values remaining after the deduction of all liabilities.

It was shown that individual citizens of Ramsey County on May 1, 1921, listed under the Money and Credits Act, promissory notes of the value of \$2,481,446, bonds of the value of \$7,595,975, and book accounts of the value of \$2,566,712. For 1922, the showing was not materially differ-

ent. It was shown too that they listed other forms of money and credits distributed among 12 other items, but since the Supreme Court of Minnesota referred only to these three items, we consider that only such items need be adverted to in this petition. In respect of promissory notes listed in Ramsey County the county assessor, testifying from direct contact with the larger taxpayers, declared that the larger part of this item represented notes taken by corporations and business concerns from customers in payment of past due indebtedness. He was unable to give any information concerning promissory notes held by individuals. As to bonds, he was able to testify that those in the tax lists reflected investments of savings or surplus funds—that is they were not held in any business of dealing in bonds. He threw no light on the item “book accounts.” There was opinion evidence in addition. The president of respondent bank, supported to some extent by the president of a second National Bank, testified that in his opinion substantially all credits represented in the Money and Credits lists constituted moneyed capital coming in competition with National Banks. The president of the largest State Bank in St. Paul expressed the opinion that the lists included no moneyed capital appreciably coming in competition with either State or National Banks. And there was some other testimony upon which, however, the Supreme Court did not base its decision, which will be referred to in the annexed brief.

The Supreme Court of Minnesota thought that the exact limitations of Section 5219 prevented its giving any consideration to the purposes of the Money and Credits Act or its results in increasing taxes on property of that class, and thought that the prohibition against taxing national banks as distinguished from taxing shares, prevented any weighing of relative burdens involving a consideration,

however indirect, of the property reflected in the values of the shares, and it proceeded to determine whether, under the decisions of this Court, promissory notes, bonds and book accounts held by individuals of Ramsey County constituted moneyed capital coming into competition with National Banks. And it felt constrained to declare that proof of the existence of promissory notes, bonds, and possibly book accounts in the hands of individual citizens in the amounts indicated, established the fact that a material amount of moneyed capital reflected in the Money and Credits list came into competition with National Banks.

The decision rests squarely on the proposition that this Court has ruled that placing surplus funds "at interest in the form of ordinary loans or investing them in interest bearing securities whether as permanent personal investments or for temporary purposes, brings them in competition with National Banks within the meanings of Section 5219 as it stood prior to the amendment of 1923."

And this, together with the ruling that the States are so limited by that Section that they may not tax their citizens on money and credits at a rate which is lower than the rate on bank shares regardless of whether such a scheme of taxation is enacted in a spirit of hostility to National Banks and even though it may actually help them in common with all other owners of tangible property, and the ruling that the terms of the Act forbid a lower rate on money and credits, even though the other factors which combine with the rate to determine taxes payable, operate to equalize the tax burden, are the rulings which we ask the Court to review.

We submit that the rulings of this Court mean that Section 5219 is to be interpreted so as to defeat discriminatory and injurious taxation of shares of National Banks where that discrimination is exercised by favoring moneyed cap-

ital of individuals which is employed in competition with the capital of National Banks. They mean that the Act is not to be narrowly applied but that its intent and spirit is to be carried out. They mean that the comparison of taxes will not be confined to rates, and particularly where the methods of taxing the two classes of property are essentially different, actual results will determine the equality or lack of equality of the respective tax burdens. They do not mean, we think, that this Court has determined that any recognized class or classes of credits necessarily come in competition with National Banks. Particularly, we insist, this Court has not ruled that promissory notes, or bonds, or books accounts, are per se moneyed capital coming in competition with National Banks.

We submit that the Minnesota Supreme Court has misapplied the controlling decisions of this Court.

The case is stated, the facts are presented, and the decisions of this Court are referred to somewhat more fully in the accompanying brief. We limit this petition to a summary statement of the matter involved.

THE QUESTION HERE PRESENTED IS ONE OF GREAT PUBLIC INTEREST

In 1921 there were Three Hundred Forty National Banks in Minnesota (R. 363, Defendant's Exhibit M) and there were Eleven Hundred Sixty State Banks (R. 350, Exhibit C). All of these banks, except respondent, two small National Banks, and two joint stock land banks, paid their taxes. In 1922, the situation was substantially the same. For subsequent years and for the future, notwithstanding the 1923 amendment to Section 5219, and an amendment of the Money and Credits Tax Law of Minnesota, in 1923, doubt as to the taxability of shares of National Banks, and in conse-

quence doubt of the taxability of shares of State Banks, exists. While we do not believe that taxes which were paid in Minnesota for the years 1921 and 1922 by State or National Banks can be recovered back, nevertheless, the question will arise and will not be wholly free from doubt, if the decision in this case is permitted to stand.

Public interest in the question is not confined to Minnesota. The issue has been in litigation with various results, in the past few years, in a great many states, particularly in the Northwestern States. Without undertaking to be absolutely accurate, we assert that laws taxing shares of National Banks in some twenty-two states, as those laws read in 1921 and 1922, were invalid if the ruling of the Minnesota Supreme Court correctly states the law, since those states either had Money and Credits Tax laws (of which there were nine,) or classified systems of taxation (of which there were twelve,) or because they had income taxes, under all of which systems money and credits are either wholly or partially exempted from taxation, or are taxed at an appreciably lower rate than shares of National Banks. (Digest of State Laws relating to Taxation and Revenue, 1922. Department of Commerce, Census Bureau.)

Three cases involving the validity of such laws in States other than Minnesota are now before this Court for consideration, on writs of error. Each case turns upon the true meaning of Section 5219, and of the proper application of the decisions of this Court under it. Each, we believe, is at variance with the ruling of the Minnesota Supreme Court. They come from Iowa, Wisconsin and Kentucky. We describe them briefly as they are presented in the published opinions.

In *First National Bank of Guthrie Center vs. Anderson*, 192 N. W. (Iowa) 6, the issue was determined upon demurrer; the system of taxing shares of National Banks in

Iowa is similar to that existing in Minnesota. Its Money and Credits Act is similar to the Minnesota law with the exceptions, that the rate is 5 mills, real estate loans apparently are included, and by separate provision, "moneyed capital within the meaning of Section 5219 of the Revised Statutes of U. S." is subject to taxation at the same rate as bank stocks. The allegation of the petition principally discussed was, quoting from the opinion, that "a sum believed to exceed \$5,000,000.00 is loaned or invested in Guthrie County by individuals which is assessed at the flat rate of 5 mills on the dollar," the assessment of bank shares being at the rate of 143.5 mills on the dollar. The Court treated the issue as one involving the right of the State to tax shares of National Banks at a higher rate than that imposed on real estate mortgages and concluded, after a discussion of the manner and extent of banking participation in mortgage loans, that this allegation failed to show the existence of moneyed capital coming in competition with National Banks within the meaning of Section 5219 as interpreted in the decisions of this court.

In *First National Bank vs. City of Hartford*, 203 N. W. (Wisconsin) 721, the Supreme Court of Wisconsin held that the taxation of shares of National Banks under a law similar to the Minnesota law, except that in Wisconsin "banks" include every person or corporation soliciting or receiving deposits of money, was not invalid under Section 5219, because individual citizens were taxed on their income and their money and credits were exempt from taxation. It was not claimed that the income tax was equal, or equivalent, to the tax on bank shares. The Court considered many different kinds of credits referred to in the evidence, and recognizing that the exempted capital included notes bearing interest, and bonds, and other interest-

bearing securities held by many individuals, declared that such proof did not demonstrate the existence of moneyed capital in the hands of individual citizens in material amounts coming in competition with National Banks. The findings of the trial court were set aside and judgment was ordered against the bank. This case turned squarely upon the interpretation of Section 5219 and upon the proper applications of the decisions of this Court thereunder.

In *McFarland vs. Georgetown National Bank*, 270 S. W. (Kentucky), 995, the Court of Appeals of Kentucky sustained taxes assessed against shares of National Banks under the classified taxing system of that State. The statutes provided for the assessment of the Bank shares for both state and local purposes, but exempted money and credits from all local taxation. It appears from the discussion that there was evidence tending to show the existence of promissory notes in the hands of individuals which were exempted from local taxation, but the Court said that it had not been shown that any appreciable amount of money held by individuals was used in making loans such as banks make, and concluded that no material part of the capital held by individuals was so invested as to come in competition with National Banks.

It may be noted too, that in the Kentucky case, the Court held that the 1923 amendment of Section 5219 was retroactive in its operation. The Minnesota Supreme Court had the Kentucky case before it while this case was under consideration. Our Court expressly declined to follow the ruling of the Kentucky court in this respect and held that the amendment was not retroactive and could not be taken into consideration in determining the law question before it.

We submit that the decisions in these cases establish the necessity of a review by this Court of the decision of the Minnesota Supreme Court, not only because they show a

widespread public interest, and doubt as to the correctness of the Supreme Court of Minnesota's application of the prior decisions of this Court, but because they present a parallel with the situation which exists when a Circuit Court of Appeals renders a decision in conflict with another Circuit Court of Appeals on the same matter.

Furthermore, it would be manifestly unfair to permit this decision to become final while cases are pending here on writs of error which, if they are affirmed, will demonstrate that the Supreme Court of Minnesota decided the controversy before it under the compulsion of an erroneous view of the rulings of this Court.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of the Court, directed to the Supreme Court of the State of Minnesota, commanding the Court to certify and send to this Court, on a date to be designated, a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Minnesota, had in said cause, to the end that this cause may be reviewed and determined by this honorable Court.

And your petitioner will ever pray.

CLIFFORD L. HILTON,

Attorney General, State of Minnesota.

G. A. YOUNGQUIST,

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STATE OF MINNESOTA,
County of Ramsey. ss.

Clifford L. Hilton being first duly sworn says upon oath that he is the Attorney General of the State of Minnesota, and one of the attorneys for the State of Minnesota, the above named Petitioner; that he has read the foregoing Petition and knows its contents, and that the facts therein stated are true to the best of his knowledge and belief.

CLIFFORD L. HILTON.

Subscribed and sworn to before me this 4th day of November, A. D., 1925.

PATRICK J. RYAN,
Notary Public, Ramsey County, Minnesota.
My commission expires Feb. 14th, 1926.

SUPREME COURT OF THE UNITED STATES

STATE OF MINNESOTA,

Petitioner.

—vs—

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
DIRECTED TO THE SUPREME COURT
OF MINNESOTA

BRIEF OF PETITIONER

STATEMENT OF THE CASE

The State brought these proceedings to obtain judgment against defendant, a National Bank located in the City of St. Paul in the County of Ramsey, for the personal property taxes assessed against its shareholders for the years 1921 and 1922. The proceedings were separate for each year but involve the same questions and were tried together by consent. Defendant interposed answers asserting that the taxes were illegal and void for the reason that its shares were taxed at a rate largely exceeding the rate at which moneyed capital in the hands of individual citizens employed in competition with National Banks was taxed. The trial court made extended findings and directed judgment for the State. Defendant appealed from an order

denying a new trial. The facts are undisputed and the controversy is in respect to the conclusions to be drawn therefrom.

The foregoing paragraph is taken verbatim from the opinion of the Supreme Court of Minnesota. (R. 308.) It takes the case to the point of consideration of it by that court.

The Supreme Court thereupon, after a review of the decisions of this Court and after deducing therefrom what it considered the controlling principles, determined that the trial court's findings, in favor of the State, were without support in the evidence, and reversed the order of the trial court denying the Bank's motion for a new trial. (R. 307-324.)

The case went back for a new trial and was submitted on the record previously made, whereupon the trial court, giving effect to the decision of the Supreme Court, found that the shares of Respondent Bank were assessed at a higher rate than competing moneyed capital in Ramsey County and in the State of Minnesota, and directed judgment of dismissal in favor of the Bank. (R. 325-336.)

The State appealed from that judgment to the Supreme Court, and the Supreme Court, adhering to its first opinion, affirmed the judgment of dismissal. (R. 343.) Petitioner seeks a review of that final judgment.

THE STATUTES

All shares of National Banks, including those of respondent bank, involved in this proceeding, were assessed in 1921 and 1922, under provisions of Chapter 416, General Laws of Minnesota, 1921. This law provides for the listing of shares by the Bank and for the payment of taxes by the Bank for its shareholders. The capital, surplus

and undivided profits of the Bank are stated, the value of the real estate (directly taxed to the Bank) is deducted and the balance is taken as indicating the value of the outstanding shares. Under Chapter 483, Laws of Minnesota, 1913, Section 1988, Rev. Laws of Minn., 1913, a classification statute, 40% of the value so arrived at, is taken to be the taxable value of the shares. To this is applied the current ad valorem tax rate, that is, the rate which, when applied to a total taxable value of all real and tangible personal property in the taxing district will raise the amount needed for governmental purposes, and this results in the statement of the amount of taxes payable. This system of taxing shares of National Banks has been in force in Minnesota for a great many years, since 1878, or longer.

Money and credits everywhere in Minnesota were assessed, in 1921 and 1922, under the provisions of chapter 285, Gen. Laws of Minn., 1911, Sections 2316-2328, Gen. Statutes, 1913. Appendix A. by this Act, money and credits of every kind, except United States bonds, Minnesota state and municipal bonds, (tax-exempt,) and real estate mortgages paying a registry tax, are taxed at a flat rate of 3 mills on each dollar of full value thereof. It is claimed that by reason of the operation of this Money and Credits Act, Respondent's shares were assessed at a higher rate than competing moneyed capital in the hands of individual citizens of Ramsey County and of Minnesota, in violation of Section 5219, Rev. Stat. U. S., and in violation of that Section as amended in 1923, even if that amendment be applicable.

The pertinent clause of Section 5219, after permitting the taxation of shares, provides:

"That the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such states."

It was amended on March 4, 1923, (page 84, Fed. Stat. Ann 1924, Sup.) so as to permit the states either to tax the shares, or to include dividends derived from shares in income for taxation purposes, or to tax the income of the banks. And in this amendment the limitation upon the direct taxation of shares was re-stated as follows:

“In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of National Banks: Provided, that bonds, notes or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this Section.”

And this amendment contained the following proviso:

“The Provisions of Section 5219 of the Revised Statutes of the United States as heretofore in force, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid or levied, or assessed, upon shares of National Banks, or the collecting thereof, to the extent that such tax would be valid under said Section.”

The Legislature of the State of Minnesota, on March 29, 1923, (Chap. 110, Laws 1923)—passed an Act in terms legalizing, ratifying and confirming all taxes theretofore levied and assessed under the laws of the State which might have been levied or assessed under the provisions of Section 5219, and under the provisions of that Section as amended.

THE FACTS

For 1921 the taxes assessed upon respondent's shareholders aggregated \$160,859.54. The assessment rate was 67 mills on each dollar of taxable value. For 1922, taxes aggregated \$160,591.26, under a 61.5 mill rate.

The evidence in the record covers both years. The showings for the two years, were, however, so nearly alike, that it will simplify this brief to state the facts for either year and declare that the evidence for the other year was substantially the same. Since we can see no material difference in the two years, we state the facts for the year 1921. Furthermore, since the City of St. Paul is almost co-extensive with the County of Ramsey, containing about 97% of the population of the County, and at least that percentage of its taxable property, we shall not distinguish between statistics which sometimes are restricted to the City of St. Paul, and sometimes cover the County as a whole; both parties, throughout the whole proceeding, having considered this difference so slight as not to have any material bearing upon the out-come of the case.

On May 1, 1921, the taxing date, the First National Bank of St. Paul had capital stock in the amount of \$3,000,000.00, surplus, \$2,000,000.00, undivided profits, \$1,371,847.48, (R. 374, Defendant's Exhibit T.) Its resources for 1921, were \$46,571,745.21, of which \$556,199.42 was real estate. (R. 374, Defendant's Exhibit T.)

The capital, surplus and undivided profits of all of the National Banks in Ramsey County, including the First National Bank, on April 28, 1921, amounted to \$14,009,788.21, of which \$2,876,697.69, was real estate. (R. 372, Defendant's Exhibit S.) The total resources of National Banks in St. Paul, as of April 28th, 1921, were \$104,145,000.00. (R. 363, Defendant's Exhibit M.)

All the National Banks in Minnesota, as of April 28th, 1921, had total capital, surplus, and undivided profits of \$73,870,000.00, with deductible real estate of the value of \$11,314,000.00. Their total resources were \$530,286,000.00. (R. 363, Defendant's Exhibit M.)

In 1921, Money and Credits listed for taxation in Ramsey County, amounted to \$83,965,268.00. (Findings of Trial Court R. 332.) Because of practical difficulties only returns amounting to more than \$4,000.00 were analyzed, that is, in the separations of money and credits reported by individuals from those reported by corporations and the separations into the various items constituting the lists only such returns were examined. The total money and credits so analyzed amounted in 1921, in Ramsey County, to \$76,635,111.00, (R. 357, Defendant's Exhibit G.) Of this amount, \$51,464,417.00 was listed by corporations, and \$25,170,614.00, by individuals, (R. 361, Defendant's Exhibit K.)

For the entire state, the money and credits lists amounted to \$425,745,839.00, (R. 393, State's Exhibit 5.) How much of this total was assessed to corporations, and how much to individuals, was not ascertainable.

In determining that these lists included moneyed capital coming into competition with National Banks, the Supreme Court of Minnesota discussed only three of the fifteen items in the lists. It is fair to assume that only these three items so referred to are worthy of consideration here. The items were, "Item 4," "promissory notes, bills of exchange, due bills, cream checks and similar evidence of indebtedness;" "Item 5," "bonds, except municipal and United States bonds, and such as are secured by real estate mortgages recorded in this State;" and "Item 10," "book accounts."

In Ramsey County, in 1921, individuals listed "promissory notes, etc.," of the value of \$2,481,446.00, "bonds" of the value of \$7,595,975.00, and "book accounts" of the value of \$2,566,712.00, (R. 361, Defendant's Exhibit K.)

No similar statistics for the entire State were available. There has never been a segregation of money and credits of corporations and of individuals for the State, and only for 1918 was there available the totals of each of the fifteen items comprised in the lists. In 1918, the total of money and credits for the State was \$325,680,420.00, of which the three items above referred to, corporations and individuals included, were as follows: "Promissory notes," etc., \$32,980,800.00; "bonds," \$14,708,895.00; and "book accounts," \$111,842,966.00." (R. 358, Defendant's Exhibit H.)

The County Assessor was able to throw some light upon the nature of these items as they appeared in the Ramsey County tax lists.

He said that promissory notes constituted nearly the whole of "Item 4," and that "bills of exchange," "due bills," "cream checks," and similar evidence of indebtedness included in the item were, in Ramsey County, insignificant in amount; and then he said, which to us seems of the utmost importance, based, as it was upon personal contact with the larger tax-payers, "that the promissory notes are very largely made up of corporations and business concerns and in almost all cases those promissory notes are accepted by the concerns for past due indebtedness." (R. 163.) He was unable to say anything concerning the nature of the promissory notes of individuals (R. 163.) As to bonds, the Assessor said the bonds included in the tax rolls in Ramsey County, represented investments of surplus funds, making it clear that he meant to distinguish between investments of savings and purchases of bonds in the busi-

ness of dealing in bonds or in any allied or like business. (R. 161, 162.) He threw no new light on the item "book accounts."

There was no testimony concerning the nature of these items as they appeared in the tax lists of the State outside Ramsey County, other than that which may be inferred from the description of the items themselves.

The president of the respondent bank testified, obviously without knowing anything of the precise nature of the items included in the money and credits list, that substantially all of the property described in those lists, both in Ramsey County and throughout the State, was moneyed capital coming in competition with National Banks. (R. 196-232.) The president of another National Bank gave somewhat similar testimony. (R. 176-179.) The president of the Central Metropolitan Bank of St. Paul, a state bank, a witness for the State, testified that there was no appreciable competition with State or National Banks in any of the items included in the lists. (R. 233-249.)

The Court referred to some additional facts showing in a general way the extent of the operations of corporations engaged in dealing in commercial paper, and in cattle mortgage loans, and of business concerns receiving loans from their officers and employes, but this testimony was of such a character that the court did not greatly rely upon it and it did not form the basis of the Court's decision. This testimony is referred to and discussed briefly in the argument.

It was shown that prior to 1911 the State had met with little success in its efforts to tax intangible personal property. It was able to assess such property while in the hands of representatives of estate, or in trust funds under court control, but little else. The experience elsewhere was the same. (Report of State Tax Commission State's Exhibit 4,

R. 389-392.) The Money and Credits Act here involved was proposed as a remedy to existing conditions. Immediately upon its passage the assessed moneys and credits greatly increased, and almost immediately revenues at the lower rate increased, and both have continuously increased since then. The increase has proceeded at least as rapidly as increases in revenue from taxes on shares of National Banks, as the following tables will show:

Revenues received by the State, for exclusively state purposes, in the years for which statistics are available, from shares of National Banks, and from money and credits were as follows:

Year	Shares	Money & Credits
1907	\$ 48,768	
1908	50,113	
1909	43,876	
1910	45,834	
1911	67,708	\$ 57,837
1912	64,309	67,412
1913	101,563	78,126
1914	81,831	98,813
1915	63,324	106,541
1916	67,111	111,971
1917	93,950	142,832
1918	69,132	165,241
1919	165,966	174,995
1920	117,764	221,560
1921	102,488	212,873
1922	100,405	200,479

These figures are from State's Exhibit 7, (R. 395), and State's Exhibit 5, (R. 393.) The State revenue from money and credits is one-sixth of the whole, and is so calculated

from Exhibit 5. The receipts of the State from taxes on money and credits prior to 1911 are not shown. The total of such taxes collected for State and local purposes, were as follows: 1907, \$480,864; 1908, \$395,197; 1909, \$368,077; 1910, \$379,754. State's Exhibit 5, (R. 393.) They were decreasing.

Taxes collected in Ramsey County on shares of National Banks and Money and Credits, were as follows:

Year	Shares	Money & Credits
1907	\$ 85,315	\$ 40,447
1908	101,747	27,360
1909	105,425	33,211
1910	102,873	83,251
1911	106,095	72,231
1912	109,965	76,785
1913	170,931	103,714
1914	186,272	125,580
1915	194,425	130,058
1916	156,776	146,115
1917	174,694	187,924
1918	194,512	217,013
1919	283,836	230,601
1920	301,065	272,365
1921	294,219	252,281
1922	285,070	250,804

These figures are from State's Exhibit 5, (R. 393,) and State's Exhibit 6, (R. 394.)

Comparisons of actual tax burdens, that is comparison of revenues received by the State from money and credits of individuals and corporations, and revenue received from similar property when held by National Banks may readily be made from the exhibits received in evidence on the trial.

In 1921, the intangible resources of Respondent Bank were \$46,015,545.29. In 1922, they were \$52,927,523.88. Taxes actually assessed against shareholders, and taxes which would have been assessed against an individual owning money and credits in those amounts were as follows:

	1921	1922
Respondent's taxes	\$160,859.54	\$160,591.26
Individual's taxes	138,046.63	158,782.58

(These calculations are based upon State's Exhibit T. R. 374.) The taxes upon shareholders are those actually assessed. (Findings of trial court R. 331.) Individual taxes are calculated by subtracting tangible resources from total resources and applying the 3 mill rate. The individual would have to pay a substantial amount in addition—equal to a tax on the value of furniture and fixtures at the ad valorem rates. In the comparisons which follow such additional taxes chargeable against individuals are left out of consideration.

For Ramsey County the comparison of taxes paid by shareholders and those chargeable to individuals and corporations, based upon similar computations from the same Exhibit M are as follows:

	1921	1922
Taxes on bank shares	\$294,219.00	\$285,070.00
Taxes on individuals	306,342.00	322,299.00

For the whole state the comparison is:

	1921	1922
Taxes on bank shares	\$ 1,279,418.00	\$ 1,302,409.00
Taxes on individuals	1,551,431.00	1,586,142.00

In this calculation, Exhibit M is again used, and in arriving at taxes on shares the average tax rate for the state, 52.67 mills in 1921, and 54.23 mills in 1922, is used.

Substantially the same situation may be shown, and the relative equality of taxation may be shown by setting out the actual total listings of Money and Credits in Ramsey County, and in the State, together with tax revenue therefor, and in juxtaposition, the intangible resources of National Banks and the tax revenue from their shares. These figures are:

1921

Ramsey County

Money and Credits,

Ramsey County	\$ 84,093,488	Tax	\$252,281
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Intangible resources,

National Banks of Ramsey

County	102,114,000	Tax	294,219
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1922

Ramsey County

Money and Credits,

Ramsey County	\$ 83,601,268	Tax	\$250,804
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Intangible resources,

National Banks of Ramsey

County	107,433,000	Tax	285,070
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1921

State of Minnesota

Money and Credits,

Entire State	\$425,745,839	Tax	\$1,277,242
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Intangible resources,

National Banks of Entire

State	517,144,000	Tax	1,279,418
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1922

State of Minnesota

Money and Credits,

Entire State	\$400,960,331	Tax	\$1,202,878
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Intangible resources,

National Banks of Entire

State	528,714,000	Tax	1,302,409
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ARGUMENT

1. Purpose and Effect of Money and Credits Law.

This Court has declared:

“It has never been held by this Court that the States should abandon systems of taxation of their own banks, or of money in the hands of their other corporations, which they may think the most wise and efficient modes of taxing their own corporate organizations, in order to make that taxation conform to the system of taxing the National Banks upon the shares of their stock in the hands of their owners. All that has ever been held to be necessary is that the system of state taxation of its own citizens, of its own banks, and of its own corporations shall not work a discrimination unfavorable to the holders of the shares of the National Banks.”

Davenport National Bank vs. Davenport Board, 123 U. S. 83, and,

“It is essential, if the law of the State is to be declared invalid under the limitations expressed in the United States Statute, that the enactment of the legislature shall evidence a disposition to evade or override the spirit of the limiting statute.”

Jenkins vs. Neff, 186 U. S. 230.

In many of the States of the country, efforts to tax intangible personal property at the same rate or in the same manner as tangible property have been given up as hopeless. Laws taxing money and credits at a low fixed rate, or applying the general ad valorem rate to a very low percentage of value have been enacted; or there has been a total or partial exemption of such property, either in connection with an income tax, or regardless of it. The impossibility of taxing it on an equality with tangible property is everywhere recognized. The Supreme Court of Minnesota, in its opinion in this case, declares this to be the situation. Frequently it is declared that there is no justice in taxing credits at all on the ground that any imposition upon them involves double taxation. The problem is one presenting great practical difficulties. And the different States have endeavored to meet it in the various ways which we have described in an effort to deal fairly, and justly, and workably with the taxation of this kind of ownership of wealth.

On the other hand, there has been no sense of wrong or injustice in taxing shares of stock in banks, whether State or National, as tangible property has been taxed. They are forms of property essentially different from promissory notes or bonds. They reflect net wealth embarked in profitable commercial enterprises.

There is, in short, a widespread, well informed, honest opinion that taxation of ordinary money and credits at a low rate is sound and just policy, and there is a like opinion that shares of National Banks are fairly and justly taxable on an equality with tangible wealth and shares of other corporations. And this opinion does not fail to perceive that when the same amount of revenue is received from

money and credits owned by individuals and corporations as is received from shares of banks having a like amount of moneyed resources there is, in fact, genuine equality of taxation.

These views account for the persistence in taxing bank shares as they always have been taxed, while the effort to find a satisfactory system of taxing money and credits continues along lines of reducing tax rates on them, or moves toward their partial or total exemption in the avoidance of double taxation.

The decision of the Supreme Court of Minnesota did not deny these things or overlook them. The holding was that the express limitations of Section 5219 forbade their recognition. The Court held to the letter of the law; whereas, the spirit of it as interpreted in the decision of this Court is, we submit, that of permitting just and workable tax laws upon property within the State and permitting just and workable taxation of shares, so long as there be no discrimination against National Banks and in favor of capital with which such banks come in commercial conflict.

These conditions are satisfied where, as here, the law which is claimed to offend against the federal act is one which aims to increase taxes on moneyed capital and which, judged by common sense practical standards, succeeds in its purpose, and where there is no real or meritorious basis for any complaint by National Banks as to its aims or as to its results in actual operation. Theoretically taxes on moneyed capital were reduced by the terms of this Act; actually they were increased. Theoretically, if we look merely at rate numerals, taxes on any moneyed capital which might come in competition with National Banks were reduced, and such capital was favored as against banking capital; practically, any moneyed capital, which might come in competition with banks was compelled, or

induced, to pay taxes, where previously it had paid none. We say that such capital previously paid no taxes because, virtually, only the money and credits in the hands of guardians, administrators, and the like, were taxed.

The law, therefor, did not, either in its purpose or effect injure or discriminate against National Banks, on the contrary, it helped them in bringing into the public treasury, revenue from a class of property which otherwise would contribute little or nothing to the common burden. We submit that Section 5219 did not intend to prevent such legislation.

2. TAXES ON MONEY AND CREDITS ARE EQUAL TO TAXES ON SHARES OF NATIONAL BANKS

The State not only showed that shareholders of National Banks reaped the benefit, in common with all other taxpayers, of increased collections of taxes from owners of money and credits, but demonstrated that, fairly compared, taxes on money and credits were equal to taxes on shareholders of National Banks.

Where taxes in one instance are assessed against a corporation on its property, and in another on shareholders, the relative tax burdens can only be compared, by attributing the corporate tax to its shareholders, or by attributing the tax on shareholders to the corporation. Plainly where two corporations have equal assets and equal capital stock, their taxes are equal when the revenues received from them, whether coming from taxes assessed against the corporation, or whether coming from taxes assessed against the shareholders, are equal.

In Minnesota, corporations are taxed upon all of their property regardless of liabilities, and the shareholders are not taxed. Where shareholders are taxed on the value of

the shares owned by them, there inheres in the form of taxation a deduction of corporate liabilities from resources. (First National Bank of Wellington vs. Chapman, 173 U. S. 205, 215.) And where individuals are taxed on all property owned by them, without right of deducting liabilities, (as in Minnesota,) taxation of individuals corresponds with taxation of corporations, as distinguished from taxation of shareholders.

It means nothing, therefore, to say that the tax rate on money and credits of corporations and individuals in Minnesota is lower than the tax rate on shares of National Banks. The question is, we submit, whether under all the circumstances, the tax burden is greater or less on one class than on the other.

And the fact is that a Minnesota corporation having the same resources in money and credits and the same capitalization as a National Bank will pay substantially the same taxes as shareholders in the National Bank. The tax on shareholders of National Banks, by actual calculation, is substantially equal to a tax of three mills on the moneyed capital of the bank. A concrete statement of the comparative workings of the two systems may be made. If respondent Bank had paid the taxes assessed against its shareholders in 1921 and 1922, it would have paid but little more than an amount equal to three mills on its intangible resources, that is, a little more than a corporation or individual having a like amount of money and credits would have had to pay. In the same years, the National Banks of Ramsey County paid taxes, for their shareholders, amounting to less than three mills on their intangible resources. And in those years, taxes paid by National Banks throughout the State, for their shareholders, amounted to less than what corporations and individuals would have been charged with at the three mill rate on an equal amount of money and

credits. Another form of statement is that a private banker, having resources equal to any designated National Bank, or all of the National Banks of Ramsey County, or all of the National Banks of the State, if permitted to operate in Minnesota, in 1921 and 1922, (there were none) would have paid under the three mill money and credit rate, more taxes than National Banks paid in behalf of their shareholders.

The Supreme Court of Minnesota, recognizing that the application of identical tax rates to the property of a corporation in one instance and to corporate shares in another, must produce greatly different results, said in effect that these comparisons were unavailing because while Minnesota corporations and individuals were required to pay on all of their money and credits, National Banks could not be taxed on their property and shareholders of National Banks were required to pay on the full value of their shares, thus applying a uniform rule. But we submit that the Court might have said, with almost as much force, that since shareholders of Minnesota corporations paid no taxes whatever on their shares, and shareholders of National Banks were required to pay taxes on their shares, there was gross discrimination against shareholders in National Banks. The true answer is, we think, that while Minnesota shareholders are not taxed on their shares, taxes are imposed upon the corporate property reflected in their shares, and because of this the exemption of shares from taxation resulted in no unfairness to bank shareholders. But certainly this answer is not complete unless we are able to say further that the taxes imposed upon the property of such other corporations are sufficient in amount to justify exempting their shareholders. The exemption is justifiable, and equality exists, where corporations of the same class are assessed by the different methods, only when taxes assessed against corporations equal those assessed

against shareholders. Comparison is not escapable, and is not prohibited because in the one case shareholders, under the local law, may not be taxed and in the other, the corporation, under the Federal law, may not be taxed.

This Court has declared that the Federal Act does not require merely equality of rates, that it commands equality of taxes, (*People vs. Weaver*, 100 U. S. 539;) that it has "to do with the actual incidence and practical burden of the taxpayer, (*New York ex rel Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373) and it has clearly indicated that it will compare actual results in taxation for the purpose of determining whether taxes on bank shares are higher than taxes on competing moneyed capital, (*Mercantile National Bank vs. Mayor*, 121 U. S. 138; *New York ex rel Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373 *supra*, *Bank of Redemption vs. Boston*, 125 U. S. 60.)

We submit that the Supreme Court of Minnesota failed in its decision to give effect to the principles so declared by this Court.

3. COMPETING CAPITAL

a. Promissory Notes, Book Accounts.

The Supreme Court of Minnesota, having concluded that the decisions of this Court barred it from considering the purpose or effect of the Money & Credits Law, and barred it from comparing tax burdens, as distinguished from rates, proceeded to determine whether under the decisions of this Court, the money and Credits tax lists included a material and substantial amount of moneyed capital coming into competition with National Banks. It concluded that proof of the existence of large amounts of promissory notes, book accounts, and bonds, required a determination that there was in the County and State, a substantial and mate-

rial amount of such capital included in the tax lists. And in so holding, without further considering the characteristics of such notes, book accounts, and bonds, our Court further misinterpreted the rulings of this Court.

Promissory notes, book accounts, and bonds, are not per se moneyed capital coming in competition with National Banks unless this Court has used the word "competition" in the same sense as did the president of the respondent bank in his testimony on the trial of this case. His view is fairly reflected in the statements "that anything which takes money is competitive with us, who are loaners of money" (R. 212.) "We feel competition on anything wherever money is employed, naturally" (R. 213.) In this view there is very little, if any, difference between "book accounts" and promissory notes. And on the record, there is no appreciable difference between them, because the testimony is that the notes listed by corporations were given by customers in payment of past due accounts. Certainly there is no reason for inferring that promissory notes listed by individuals differ from those held by corporations.

And when we further recognize that, as a matter of common knowledge, promissory notes held by individuals, not representing past due accounts, ordinarily stand for loans made among relatives and friends, made usually where banking credit is lacking, there is very little left on which to base any claim that proof of the existence of promissory notes established the existence of moneyed capital coming in competition with National Banks. Except for "commercial paper," promissory notes, on the undisputed testimony and the only fair inferences which may be made, are no more competitive with National Banks than book accounts. The Supreme Court of Minnesota, we submit, was right in treating them alike.

This Court has never held that book accounts constitute

moneyed capital coming in competition with National Banks. It seems to us that *First National Bank vs. Wellington*, 173 U. S. 205, in declaring that claims and demands for labor or service due or to become due "are not in any sense of the statute moneyed capital" indicates a contrary opinion.

And further, we believe that this Court has never held that promissory notes, as such, without further showing as to their nature, constitute competing moneyed capital. It seems to us that *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440, and *First National Bank of Commerce vs. Seattle*, 166 U. S. 433, in declaring that an allegation that \$237,400.00 was invested by individual citizens of Chehalis County, "in loans and securities to them payable," and that such capital "was all the moneyed capital owned by resident individual citizens and invested in interest bearing loans, discounts and securities" left the Court, "uninformed whether the moneyed capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with National Banks" are direct rulings that loans and securities are not per se capital coming into competition with National Banks.

Mere proof, therefore, of the existence of promissory notes shows nothing. There must be, further, some evidence of characteristics or use bringing them in competition with National Banks. Here, insofar as there is proof, the showing, except as to commercial paper, negatives competition.

The evidence as to "commercial paper" was not such, as, under the decisions of this Court, would warrant or require a finding of discrimination against National Banks, and the Supreme Court of Minnesota plainly did not so consider it. Briefly stated, the testimony was that a great deal of money was borrowed in Minnesota and Ramsey County by commercial houses located there, through note

brokers. Only two note brokers were specifically referred to and they were corporations, (R. 114, 190, 191.) They loaned money in Ramsey County but they were not shown to be taxable there. The assessor of Ramsey County knew of only two small "investment" houses paying taxes in Ramsey County and there was nothing to indicate that either of them were the note brokers referred to. (R. 165, 166.) Obviously proof that two such corporations were doing business in Minnesota, in 1921 and 1922, was not sufficient to show that a material amount of competing moneyed capital owned by financial corporations, was assessed more favorably than shares of National Banks. And if they did any great amount of business it is quite likely that taxes on their loans at the three mill rate would greatly exceed a tax on their capital at the ad valorem rate. The further showing was that these note brokers sold their commercial paper principally to banks. (R. 204-206.) There was some evidence, very vague and indefinite, that some of this paper got into the hands of individuals. (R. 178, 179.) Certainly on this evidence, there could be, and was, no finding that the item "promissory notes" in the tax list included any material or substantial amount of commercial paper in the hands of individual citizens of Ramsey County, or the State of Minnesota.

The only additional testimony tending to characterize the item "promissory notes" in the tax lists is found in the evidence that statements of financial condition made by commercial houses in St. Paul to respondent bank disclosed that officers and employees of such concerns had loaned their employers sums aggregating at least \$1,500,000.00. (R. 204.) But nothing further as to the nature of these loans was disclosed. Obviously, they may have been partial payments on the purchase of stock; they may have been salaries or commissions retained for disburse-

ment at a specified date, as at the end of the year; or they may have been the result of efforts to promote thrift among employes. They would not be competitive capital in any of these cases. (Stocks, *Mercantile National Bank vs. Mayor*, 121 U. S. 138; earnings, *First National Bank of Wellington vs. Chapman*, 173 U. S. 205; promotion of thrift, *Davenport National Bank vs. Board*, 123 U. S. 83, 86.)

CATTLE LOAN PAPER

The Supreme Court of Minnesota referred to only one additional class of credits, and that class may be appropriately discussed with commercial paper. The showing was that three corporations, one located in Ramsey County and affiliated with a National Bank, one located outside of Ramsey County, and one not a Minnesota corporation, (R. 193, 194,) sold in Minnesota, a large amount of "cattle loan paper." But only \$580,665.00 of this paper was sold to individuals over the State of Minnesota in 1921, and less than that was so sold in 1922. Exhibit R., R. 371.) There was no evidence as to how or where these corporations were taxed or where their shareholders resided. As to individual purchasers, the papers held by them, distributed as it was over the entire state, was not material or substantial in amount. Furthermore, there was no proof as to the nature of these "cattle loans." Since the only corporation dealing in these loans, which was identified, was affiliated with a National Bank, it is not to be supposed that the few individuals who bought such papers were in competition with National Banks. And it may be supposed too, that the corporations conducting this business exist for the purpose of enabling National Banks to safely participate in these loans, since most of the loans were sold to banks.

b. BONDS.

The Assessor said that bonds listed by individuals represented investments of savings and were not holdings of persons engaged in dealing in bonds. (R. 161, 162.) The ruling of the Supreme Court is based upon this declaration. They were taxable bonds, therefore, they were bonds of railroads, manufacturing companies, public utilities, and the like.

This Court said in *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440, 461, that an allegation that, "there was invested in the stocks and bonds of insurance, wharf, and gas companies, and other moneyed institutions, moneyed capital amounting to at least \$26,000,000.00," was not significant "because such companies are not, as we have seen, competitive for business with the National Banks, and therefore, might be legally exempted."

Bonds are essentially long term loans. As such National Banks may not invest in them. Actually, most bonds are readily marketable, and where they are listed on the New York Exchange, and are actively dealt in there, the banks buy them as short term investments. The respondent bank buys only listed bonds, (R. 220.) Insofar as this use of resources by banks amounts to buying and selling bonds,—trafficking in bonds, it is unauthorized. *Morse on Banks & Banking* (5th Ed.) Vol. 1, Sec. 59,77, and see, *Logan Co., National Bank vs. Townsend*, 139 U. S. 67,73, 76.

In any event, in no practical sense can it be said that the purchase of bonds by individuals as investments of their savings is competition with National Banks. From a practical standpoint, National Banks can only profitably employ their resources in bonds by buying them with a view to resale to their patrons. There is no competition between buyer and seller. In addition, they may invest temporarily

idle funds in bonds which can be quickly sold at the price paid for them. This is made possible only through the readiness of owners of surplus funds to purchase them when the banks find it necessary to recover their resources for proper banking uses. In a word, bonds, except government bonds, and investments in bonds, are outside the field in which National Banks may legally operate; regardless of this, to some extent they find it profitable to go beyond their powers and to take advantage of investment possibilities outside the banking field, but that does not bring such investments into competition with them. It is difficult to see, therefore, where, or how, bonds representing investments of savings by individual citizens can come in competition with National Banks, unless the rulings of this Court mean that all money at interest is competing capital.

Altogether, therefore, there is nothing in the nature or characteristics of notes, book accounts, or bonds, which requires a ruling that the mere ownership of them brings the holder in competition with National Banks. And this Court has never so held.

RULING OF THIS COURT IN RICHMOND BANK CASE

The decision of the Supreme Court of Minnesota was based principally, if not wholly, on the decision of this Court in *Merchants National Bank vs. Richmond*, 256 U. S. 635. But that case did not decide that all bonds, notes, or evidences of indebtedness were moneyed capital coming into competition with National Banks. The ruling there was as if the petition alleging that bonds, notes, and evidences of indebtedness in the hands of individuals, coming into competition with National Banks, were taxed at a lower rate than bank shares, had been demurred to.

The assertion of the bank that the Richmond lists included a substantial amount of moneyed capital coming into competition with National Banks was left undisputed, more, it was virtually admitted in the testimony of the Virginia Commissioner of Revenue, (Record of that case, page 42.) The Supreme Court of Appeals of Virginia ruled that only moneyed capital employed by state banks, none of which was in the intangible lists, came into competition with National Banks. That view was held to be erroneous and that holding disposed of the only issue made on the record.

If this Court intended to declare that bonds, notes, and evidences of indebtedness were per se forms of competing capital it would not have been necessary to add that the notes, bonds, and evidences of indebtedness referred to, were shown by evidence without dispute to come into competition with National Banks (638.) Nor would the Court have said later in the opinion: (p. 641:)

"No decision of this Court to which our attention is called has qualified that rule, or construed Section 5219 as leaving out of consideration the rate of State taxation imposed upon moneyed capital in the hands of individual citizens, invested in loans or securities for the payment of money, either for permanent or temporary investment, *where such moneyed capital comes into competition with that of National Banks.*"

The Supreme Court of Minnesota overlooked the controlling reservation which we have italicized and stated the rule to be, and applied it, in the following form:

"Credits in the form of interest bearing demands and money invested in loans or securities, whether such investments are of a permanent character or for a temporary purpose * * * * *are deemed moneyed*

capital used in competition with national banks within the meaning of Section 5219.

These comparisons, it seems to us, absolutely demonstrate the sharp difference between the views of the Supreme Court of Minnesota and the views of this Court.

In the Richmond case the Supreme Appellate Court of Virginia ignored the showing as to competition between individuals owning moneyed capital and National Banks, because it thought such competition irrelevant, here the Minnesota Supreme Court ignored the lack of evidence of competition between moneyed capital owned by individuals and National Banks, because it thought any such evidence immaterial in a case in which individuals were shown to be the owners of notes, bonds, and book accounts.

Of course, promissory notes may be held by individuals in competition with National Banks, and it may be that book accounts or bonds can be held under such circumstances as to bring them in competition with National Banks, but they are not necessarily competitive, and the burden of proof is with whoever asserts that they are competitive, (*People ex rel Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373, 392, 393.) They were not shown in this case to be competitive, and the Supreme Court's ruling, overturning the trial court's finding that there was no material competition, is based wholly upon its theory that the decisions of this Court hold that they are under all circumstances competitive, in which ruling we submit, it misapplied this Court's decision's.

Respectfully submitted,

CLIFFORD L. HILTON,

Attorney General, State of Minnesota.

G. A. YOUNGQUIST,

Assistant Attorney General.

HARRY H. PETERSON,

County Attorney, Ramsey County.

ROY A. MACDONALD,

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PATRICK J. RYAN,

Attorneys for Petitioner.

APPENDIX A

Chapter 285—H. F. No. 331.

An Act establishing a uniform tax on certain classes of personal property.

Be it enacted by the Legislature of the State of Minnesota:

TAXATION OF MONEY AND CREDITS—Section 1. "Money" and "Credits" as the same are defined in Section 798, "Revised Laws of 1905," (N. 1,) are hereby exempted from taxation other than that imposed by this Act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

But nothing in this Act shall apply to money or credits belonging to incorporated bank situated in this State, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907. (N. 2.)

HOW LISTED—Section 2. All "Money" and all "Credits" taxable under this Act shall be listed in the manner provided in Section 816, "Revised Laws of 1905," but such listing shall be upon a separate blank from that upon which other personal property is listed.

ASSESSMENT BY ASSESSOR—Section 3. Before making an assessment of "Money" and "Credits" under this Act, the assessor shall give seasonable notice to the inhabitants of his district in the manner prescribed in Section 808, "Revised Laws of 1905." He shall require each individual, co-partnership, company, association or corporation in his district to bring in before a date therein specified and not later than the first day of July a true list of all their "Moneys" and "Credits" taxable under this Act.

TAX COMMISSION TO PREPARE INSTRUCTION—Section 4. The Minnesota tax commission shall annually prepare instructions for bringing in the lists required by the preceding Section. They shall prepare and distribute through the county auditors to the assessors a form for the returns which the taxpayers are required to make by

this Act, and this form shall be printed on a separate sheet, and shall be entirely distinct from the forms prepared for the returns of other classes of property. This form shall require the taxpayer to make a return of the total amount of his "Money" and "Credits" taxable under this Act.

The Minnesota tax commission shall cause to be printed and shall furnish assessors blank lists for the return of property taxable under this Act, and the assessor shall distribute a blank list to every person liable to taxation.

STATEMENT TO BE MADE UNDER OATH—Section

5. The assessor shall in all cases require a person bringing in a list to make oath that it is as nearly correct as he is able to make it and this oath shall be attached to and be a part of such list.

Such list shall be open to the inspection of the assessor, county auditor, their deputies and clerks, the board of review, the board of equalization, their clerks, the Minnesota tax commission and its assistants and clerks, but the details of the lists made by taxpayers shall be disclosed to no other person except by order of Court, and any assessor or other person who shall disclose such details shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars. The lists shall be delivered by the assessor to the county auditor and by him preserved.

ASSESSOR TO ACCEPT AS TRUE—Section 6. The assessors shall receive as true except as to valuation, the list brought in by each person, unless on being thereto required by the assessor he refuses to answer on oath all reasonable and necessary inquiries as to the nature and amount of his property taxable under the provisions of this Act.

TO ASCERTAIN PARTICULARS OF PERSONAL ESTATE—Section 7. The assessor shall ascertain as nearly as possible the particulars of the personal estate subject to taxation under this Act of any person who has not brought in such list, and shall estimate its just value according to his best information and belief. He shall also add thereto fifty per cent of the estimated value of such

property as a penalty; and such estimate, with the penalty of fifty per cent, shall be entered in the valuation books, and shall be conclusive upon any person who has not seasonably brought in a list of his estate unless he can show reasonable excuse for the omission.

ASSESSOR TO SPECIFY THE AMOUNT OF EACH—Section 8. In making such estimate the assessor shall specify the amount of "Money" and "Credits" separately and shall enter the same upon the books furnished under the provisions of Section 10 of this Act. An error or overestimate, or either, shall not be taken into account in determining whether a person is entitled to abatement, but only the aggregate amount of such estimate.

CHANGE OF DOMICILE—Section 9. After property taxable under the provisions of this Act, has been legally assessed to any inhabitant of the State of Minnesota, included any executor, administrator, or trustee, an amount not less than that last assessed by the assessor of such district in respect of such property shall be deemed to be the sum assessable, until a true list of such property is brought in to the assessor in accordance with the provisions of Section 3, of this Act. When a person liable to be taxed for personal property included within the provisions of this Act changes his domicile, the assessor of the district to which he removes shall assess him for an amount not less than that for which he was assessed in the district from which he removed, until he files the list required by Section 3, of this Act. The duties of assessors under this Section shall be the same as prescribed in Section 858, Revised Laws of 1905, and whoever neglects to perform any duty imposed upon him by this Section shall be guilty of a misdemeanor.

TAXABLE PROPERTY—Section 10. Property taxable under this Act shall not be included in the valuation list which assessors are required to make under the provisions of Section 835, Revised Laws of 1905, but shall be listed in a separate book or in a supplement to the regular assessment book which the county auditor shall provide

for each assessor on or before the first day of May, each year.

This book, supplement, shall show the total amount of "Money" and of "Credits" assessed to each taxpayer under the provisions of this Act, and shall not disclose further details of his assessment. It shall contain also a summary showing the number of individuals, firms, associations, trustees, etc., assessed for such property and the total amount of "Money" and "Credits" taxable under the provisions of this Act. When making the return to the county auditor provided for by Section 850, Revised Laws of 1905, the assessor shall file this valuation book, or supplement, together with the summary of the same and the listing blanks filled out by each taxpayer assessed under the provisions of this Act.

The county auditor, when compiling the returns required by Section 862, Revised Laws of 1905, shall include, under a separate heading the aggregate assessment in each district of property assessed under the provisions of this Act.

REVIEW OF ASSESSMENT—Section 11. The assessment under this Act shall be reviewed and equalized the same as the assessment of other personal property is reviewed and equalized.

COMPUTATION OF COUNTY AUDITORS—Section 12. The county auditor of each county shall compute the taxes under this Act each year against each individual, co-partnership, company, association, or corporation and he may include such tax on the personal property tax list with the other personal property tax levied against such individual, co-partnership, company, association, or corporation where the assessment is made.

The tax levied under this Act shall be collected by the county treasurer, or sheriff, the same as other personal property taxes are collected.

APPORTIONMENT OF RECEIPTS—Section 13. All taxes paid to the county treasurer under the provisions of this Act shall be apportioned, one-sixth to the revenue fund of the State of Minnesota, one-sixth to the county revenue

fund, one-third to the city, village or town and one-third to the school district in which the property is assessed.

Section 14. This Act shall take effect and be in force from and after its passage.

Approved April 19, 1911.

(N. 1.)

SECTION 798, REVISED LAWS OF MINNESOTA, 1905

OTHER DEFINITIONS—In the construction of this Chapter, the following rules shall be observed, unless such construction would be inconsistent with the manifest intention of the legislature, or repugnant to the context:

1. "Money" or "Moneys" shall mean gold and silver coin, treasury notes, bank notes, and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this State, is entitled to withdraw in money on demand.

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

(N. 2.)

(Operates to except real estate mortgages on which registry taxes only are payable.)

SUPREME COURT OF THE UNITED STATES

STATE OF MINNESOTA,

Petitioner.

VS.

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

NOTICE

To First National Bank of St. Paul, Respondent:

Please take notice that upon a certified copy of the transcript of record herein, we shall present the Petition for Writ of Certiorari and the Brief in support thereof, hereto annexed, to the Supreme Court of the United States at the Capital, in the City of Washington, District of Columbia, on the ~~7th~~^{9th} day of ~~November~~^{October}, 1925, on the opening of the Court on that day, or as soon thereafter as counsel can be heard.

We shall request the clerk of the Supreme Court to make such presentation for us.

CLIFFORD L. HILTON,

Attorney General, State of Minnesota.

G. A. YOUNGQUIST,

Assistant Attorney General.

HARRY H. PETERSON,

County Attorney, Ramsey County.

ROY A. MACDONALD,

Assistant County Attorney.

PATRICK J. RYAN,

Attorneys for Petitioner.

To:

THOMAS D. O'BRIEN and

ALEXANDER E. HORN.

Counsel for Respondent.

(4)

FILED

NOV 17 1926

WM. H. STANSBURY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 245.

THE STATE OF MINNESOTA,

Petitioner,

vs.

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

PETITIONER'S BRIEF.

CLIFFORD L. HILTON,

Attorney General,

G. A. YOUNGQUIST,

Assistant Attorney General,

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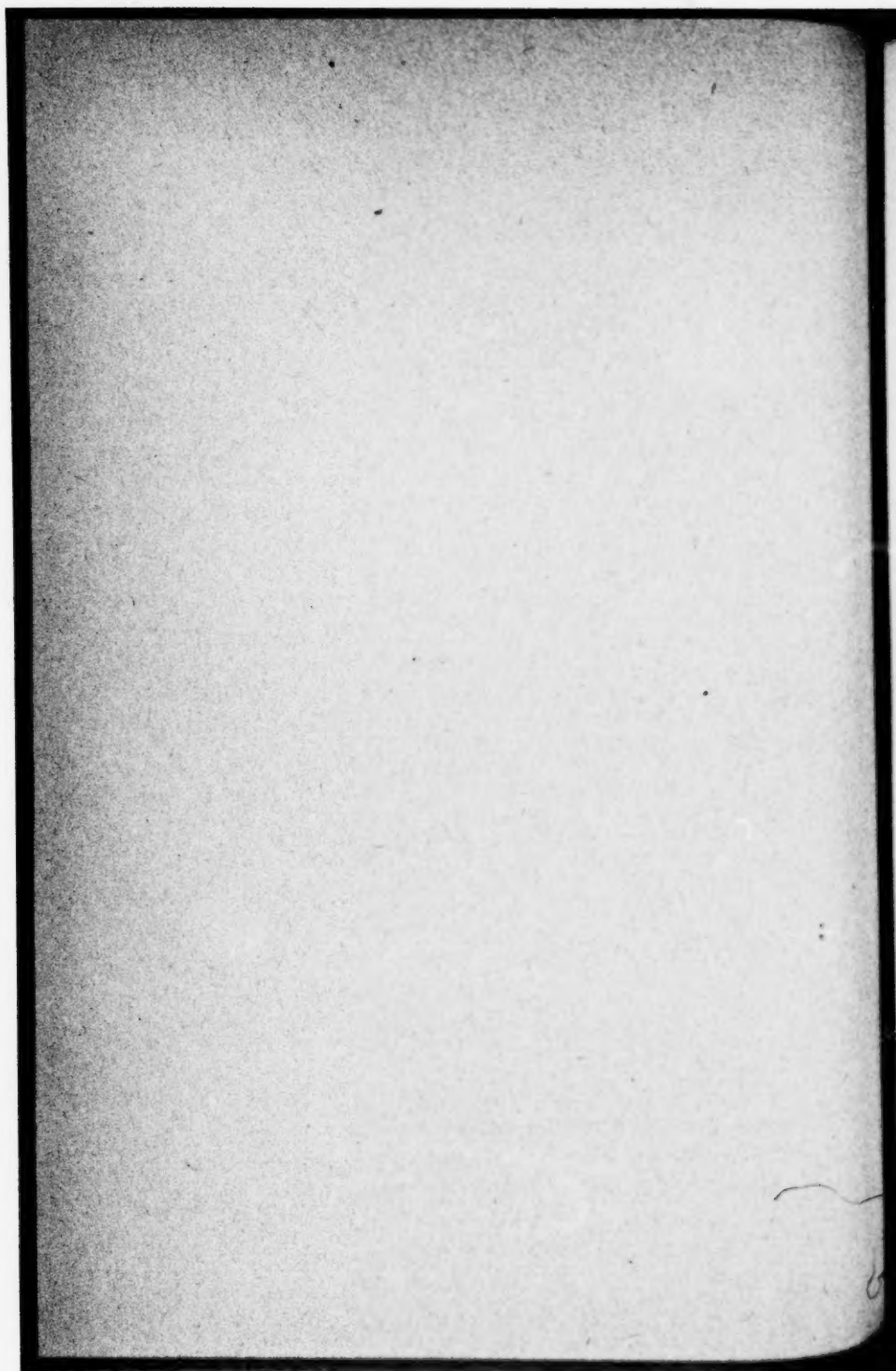
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OCTOBER TERM, 1926.

No. 245.

THE STATE OF MINNESOTA,

Petitioner,

vs.

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

PETITIONER'S BRIEF.

STATEMENT OF THE CASE, AND THE PROCEEDINGS
THEREIN.

In 1921 taxes were imposed upon shareholders of defendant, the First National Bank of St. Paul, in the sum of \$160,859.54. In 1922, they were taxed in the sum of \$160,591.26. In 1921 the rate was 67 mills on forty per cent of each one hundred dollars of value of shares. In 1922 the rate was 61.5 mills on a like valuation. (Findings VI, R. 331.) These taxes re-

mained unpaid and proceedings in the name of the State were instituted for their collection. There were separate suits but they were consolidated and tried together. The bank, answering for its shareholders, alleged that the taxes for each year were assessed in violation of Section 5219, Rev. Stats. U. S. It asserted that the taxes were calculated at a higher rate than taxes assessed on competing moneyed capital in the hands of individual citizens of Ramsey County (in which St. Paul is situated), and of the State of Minnesota. Specifically, it asserted that all "money and credits" were assessed at the rate of three mills on each dollar of value; real estate mortgages were assessed, when registered, at the rate of 15¢ per hundred dollars on the money loaned when the loan period was under five years, and sixty days; and at the rate of 25¢ per hundred dollars when the loan period exceeded five years, and sixty days; and that money and credits and mortgages were held in large amounts in Ramsey County and the State of Minnesota in competition with national banks. It further asserted that national banks and their shareholders were discriminated against in the operation of the state's system of taxing state banks, because, although taxes on state banks were calculated in the same manner and at the same rate as shares of national banks, their assessment directly against the state banks as distinguished from assessments against shareholders, operated to permit state banks to deduct investments in tax exempt state and government bonds from their capital funds, thereby greatly reducing taxes below actual level of taxes upon shareholders of national banks. (Ans. 1921, paragraph IV—VI, IX, 6, 7, 9; Ans. 1922, paragraphs IV—VI, IX, 12-15.)

The trial court found and determined that no material or substantial amount of money and credits listed at the three

mill rate was moneyed capital coming into competition with national banks (266); and it found generally that there was no discrimination against defendant bank in any assessment of moneyed capital in the hands of individuals or moneyed corporations (270, 271). In the memorandum attached to its findings and conclusions, the Court declared that there was no violation of Section 5219, either through the registry tax on mortgages, or in the method of taxing state banks (285, 287).

The bank moved various amendments of the findings and conclusions (288), which motion was denied (301); and it moved for a new trial (302-304), which was denied (305); whereupon it appealed to the Supreme Court of Minnesota from the order denying its motion for a new trial (306).

The Supreme Court reversed the order appealed from. It held, in brief, that proof of the taxation of bonds, and possibly promissory notes and book accounts, held as they were by individuals in substantial amounts, at a three mill rate, while shares of national banks were taxed at a much higher rate, showed a violation of Section 5219 (314-316, 322, 323). It declared that there was no necessity for deciding whether the method of taxing real estate mortgages was in violation of that section (321); and it ruled that the method of taxing state banks was permissible under the decisions of this Court (321-323).

State vs. First Nat. Bank, 204 N. W. 874.

The case then went back to the trial court. It was submitted on the record previously made, and the court, obviously giving effect to the opinion of the Supreme Court, made new findings, as on a new submission, in which it found that moneyed capital held by individual citizens of Ramsey County and Minnesota, coming in competition with the business of

national banks, was taxed at a lower rate than shares of those banks, and it determined that the shares of defendant bank were assessed in violation of Section 5219 (324-336). Judgment was entered in favor of the bank (337, 338). The State appealed from this judgment (339); there was an affirmance by the Supreme Court pursuant to its previous opinion (343); and final judgment was entered in favor of the bank (344).

State vs. First Nat. Bank, 205 N. W. 375.

On November 25, 1925, the state presented its petition for writ of certiorari to this court for a review of the final judgment of the State Supreme Court, which petition was granted on December 14, 1925 (State of Minnesota v. First National Bank, No. 820, October Term, 1925, 269 U. S. 550).

THE STATUTES.

Section 5219, Rev. Stat. U. S.

The pertinent part of the Act of Congress provided that shares of stock of national banks might be taxed to their owners under state laws in the district in which the bank is located. The limitation was "the taxation shall not be a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." This statute is set forth in full in our appendix beginning at page 67. The amendment of 1923, in which this limitation was restated is, for reference, set forth in full beginning at page 67 appendix.

Chap. 416, p. 416, Laws of Minnesota, 1921.

The Minnesota Act taxing shares of national banks, in force during 1921 and 1922, provided in Section 1, that "shares of stock of every bank in this state organized under the laws of the United States and the moneyed capital of every bank or mortgage loan company organized under the laws of this state shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located."

Section 2 declared that shares of national banks should be assessed against their holders, but in the name of the bank, and that moneyed capital of state banks and mortgage loan companies should be assessed against and paid by the bank or loan company.

Section 3 required officers of these institutions to furnish to the assessor a return showing the amount and number of their shares, the amount of surplus, undivided profits and all other funds, and the amount of legally authorized investments in real estate. The assessor was required to deduct the amount invested in real estate from the aggregate capital and to use the balance as the basis for determining the taxable value of shares and of moneyed capital.

Section 4 required officers of the national banks to deduct and pay taxes assessed against shareholders from annual earnings before declaring any dividend, and authorized the charging of such payments to the expense account of the bank.

Section 5 repealed prior inconsistent laws, and Section 6 provided that the act should be in force on and after its passage. The effective date was April 21, 1921.

This act is set out in full beginning at page 70 of the appendix.

Something of the history of this act should be stated.

As early as 1878 there was in force an act providing for the taxation of shares of state and national banks on their full value, the value to be ascertained substantially as described in the act of 1921. Sections 24-26, Chap. 11, Stat. Minn. 1878.

In 1905 there was an amendment bringing within the act shares of "mortgage loan companies." Mortgage loan companies were not defined (Chap. 60, Laws Minn. 1905).

The 1905 Act remained in force until 1921 when the change was made by which state banks and mortgage loan companies were taxed on their moneyed capital, and taxation of their shares ceased.

In defendant's brief in the State Supreme Court it was said, on the authority of Chap. 8 of the 9th Biennial Report of the State Tax Commission, that the 1921 amendment was made to enable state banks to deduct state taxes from gross income in their federal income tax reports.

The history of the act may be completed, irrelevantly perhaps, by pointing out that in 1925 taxation of shares of state banks and mortgage loan companies was restored and provision was made for the taxation of those shares and shares of national banks, in the same manner as in the earlier acts, but on the basis of 33 1/3% of true value. (Chap. 306, page 387, Laws Minn. 1925.)

The law of 1921, and the others as well, fitted into the system providing for the general taxation of all tangible real and personal property, which may be briefly described as the familiar ad valorem system, with the qualification that various kinds of property were classified and assessed at different percentages of true value. Under these laws assessors in the various taxing districts over the state listed all real and tangible personal property (with exceptions such as the prop-

erty of transportation companies and the like, and with the exceptions hereafter referred to). They then determined its full and true value and reduced that value to assessable value under the classification act. The total of these assessments fixed the amount of property available for taxation. Each taxing district then determined the amount of revenue needed. Here the taxing districts were the city of St. Paul, the County of Ramsey, and the State. Having determined the amount to be raised, that sum was divided by the aggregate of taxable property and the rates for each district resulted; the sum of these fixed the rate at which taxes were charged.

Section 2048-2059, Gen. Stat. Minn. 1913. Classification Act; Section 1988, Gen Stat. Minn. 1913.

Chapter 285, Laws, Minnesota, 1911.

The Money and Credits Act in force in 1921 and 1922, first came into effect in 1911. It provided that all money and credits, as defined in Section 816, Revised Laws of 1905, which definition was broad enough to include every form of money and credits, except mortgages on Minnesota real estate, should be listed and taxed at the rate of three mills on each dollar of fair cash value thereof. The assessor might examine the person making the return, under oath, but except for this the return was not subject to impeachment (Sec. 6). All taxes paid under the act were apportioned one-sixth to the State, one-sixth to the County, one-third to the city, village or town, and one-third to the school district in which they were assessed.

The pertinent provisions of this law are set out at page 73 of the appendix.

Section 798, Rev. Laws of 1905, carrying the definition of money and credits covered by Chap. 285, Laws Minn. 1911,

was broadened in 1917 so as to include shares of stock of foreign corporations. Chap. 130, Laws Minn. 1917.

The definition of money from Sec. 816, Rev. Laws 1905, and the definition of credits from Chap. 130, Laws 1917, are set out in full at page 74 of the appendix.

The mortgage registry tax law was enacted in 1907. At first it provided for a tax at the rate of fifty cents for each hundred dollars of debt secured. It was amended at different times thereafter in other particulars not pertinent here. In 1921 and 1922 it provided for a tax of 15¢ on each hundred dollars or fraction of the principal debt or obligation secured by each mortgage on land in Minnesota, and each contract for the purchase of land under which the vendee took possession; when the maturity of the obligation was fixed at a date more than five years and sixty days after the date of the instrument the tax was at the rate of twenty-five cents on each hundred dollars of obligation. The tax was payable on mortgages which were offered for record. After registry and payment of the tax, the mortgage and debt were exempt from all other taxes. The proceeds of the tax were apportioned in the same way as those of the Money and Credits Tax Law. Chapter 328, Laws Minn. 1907, as amended by Chapter 445, Laws Minn. 1921. Appendix, page 76.

The gross earnings tax on trust companies was enacted in 1913, and remained in effect without amendment during 1921 and 1922. It provided that each trust company in the State should pay an annual tax equal to 5% of its gross earnings during the preceding calendar year, the tax to be in lieu of all other taxes and assessments on its capital stock and personal property. It provided, however, that "if any such company shall receive deposits subject to check other than trust deposits, then such company shall be assessed in the same man-

ner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks." Chap. 529, Laws Minn. 1913.

THE FACTS.

The case for the bank was presented chiefly, if not wholly, on the theory that, in order to show a violation of Sec. 5219, it was only necessary to prove that a substantial amount of notes, bonds, mortgages and other evidences of indebtedness, was taxed at the three mill rate, or at the mortgage registry tax rate, without showing the use of any such securities as capital of a business enterprise competing with national banks. And the findings ultimately made gave effect to that theory. Because of this, if there is to be any consideration of the record, other than a reversal under the authority of *First National Bank of Guthrie Center vs. Anderson*, 269 U. S. 341, our statement of the facts must consist of a recital of testimony, or a summary of it, instead of the usual presentation of ultimate facts.

On May 1st, (the taxing date) 1921, the capital, surplus and undivided profits of defendant bank, after deducting authorized investments in real estate, amounted to \$6,002,218.01. Its shares were taken by the assessor to be of that value. Forty per cent of true value was, as prescribed by statute, taken as their assessed value. The current ad valorem tax rate (67 mills) was applied, resulting in the tax of \$160,859.54. On May 1st, 1922, the bank's capital funds, less real estate, amounted to \$6,528,104.06. Applying the ad valorem rate for 1922 (61.5 mills) taxes on shareholders were fixed at \$160,591.26 (331). Of the 67 mills charged in 1921, all but 4.18 mills were for local purposes. (Ex. A. 347). In 1922, all

but 4.13 mills of the 61.50 mills charged were for local purposes (Ex. B, 348).

We take up first the testimony in the record dealing with the operation of the law taxing money and credits at a flat three mill rate and as to whether or not moneyed capital coming in competition with national banks was brought, in any substantial or material amount, within the operation of that act.

The totals of moneys and credits of all descriptions listed for taxation in the whole state were: 1921, \$425,745,839; 1922, \$400,960,331 (Exhibit 5, 393). For the County the total listings were: 1921, \$84,093,488; 1922, \$83,601,268 (Exhibit 5, 393).

The tax records contained no separation of these totals into the fifteen items under which they were listed by taxpayers, but the county assessor, for the purpose of this case, examined each taxpayer's return for the county, where the return amounted to more than four thousand dollars, and he separated the items in such returns, and he made a further separation of them as between individual and corporate taxpayers. In this way, and to this extent, returns in Ramsey County aggregating \$76,635,111, for 1921, and \$76,665,643 for 1922, were analyzed (Exhibit G, 357).

It was thus shown that taxpayers listed in the county their principal items of money and credits, among others, as follows:

(1) Money subject to check: 1921, \$9,117,749; 1922, \$9,341,138.

(4) Promissory notes: 1921, \$7,265,200; 1922, \$6,825,425.

(5) Bonds: 1921, \$8,290,795; 1922, \$10,795,020.

(6) Real estate mortgages on lands outside the state: 1921, \$2,072,790; 1922, \$1,989,760.

- (8) Chattel mortgages: 1921, \$1,649,369; 1922, \$1,374,835.
 (10) Book Accounts: 1921, \$36,772,916; 1922, \$34,617,422; and
 (15) Shares of stock in foreign corporations: 1921, \$8,773,620; 1922, \$8,180,240 (Ex. G, 357).

The aggregates of the more important items in the County as they were divided between individuals and corporations, taken from Exhibit K (361) and Exhibit L (362) were as follows:

(1) Money subject to check: 1921, Corporations, \$5,100,329; Individuals, \$4,017,420; 1922, Corporations, \$5,845,308; Individuals, \$3,494,830.

(4) Promissory notes: 1921, Corporations, \$4,783,754; Individuals, \$2,481,446; 1922, Corporations, \$5,176,615; Individuals, \$1,648,810.

(5) Bonds: 1921, Corporations, \$694,820; Individuals, \$7,595,975; 1922, Corporations, \$853,065; Individuals, \$9,931,955.

(6) Real estate mortgages on lands outside the state: 1921, Corporations, \$105,320; Individuals, \$1,967,470; 1922, Corporations, \$66,360; Individuals, \$1,923,400.

(8) Chattel Mortgages: 1921, Corporations, \$1,264,685; Individuals, \$384,684; 1922, Corporations, \$1,027,168; Individuals, \$347,667.

(10) Book Accounts: 1921, Corporations, \$34,206,204; Individuals, \$2,566,712; 1922, Corporations, \$32,185,187; Individuals, \$2,502,235; and

(15) Shares of foreign corporations: 1921, Corporations, \$4,046,920; Individuals, \$4,726,700; 1922, Corporations, \$2,124,835; Individuals, \$6,055,405. (Exhibit K and Exhibit L, 361, 362.)

No similar separation for the whole state was practicable. One was made for both State and County by the State Tax Commission in 1918. The results are set forth in Exhibit II, (358), and Exhibit I, (359), and may be taken as typical (152). So far as material here, we think that it may be assumed that in 1921 and 1922 the different items listed as money and credits over the whole state were in somewhat the same relative proportion to the whole as in Ramsey County.

The president of defendant bank testified, in substance, that in his opinion each of these items of money and credits represented moneyed capital coming in competition with national banks. His understanding of what constituted moneyed capital coming into competition with national banks is fairly reflected in his statements: "that anything which takes money is competitive with us, who are loaners of money" (212); "we feel competition on anything wherever money is employed, naturally" (213). The president of the Twin Cities National Bank gave somewhat similar testimony (176-179). The president of the Central Metropolitan Bank, a state institution, a witness on behalf of the state, said, substantially, that he saw no appreciable competition in any of the items described in the money and credits list (234-246). The county assessor of Ramsey County testified that he customarily examined and familiarized himself with the contents of the lists returned by taxpayers, receiving all the large ones himself (159-161). He said, as to bonds, that in almost all cases they were securities bought for investment purposes. He made clear that he meant that they were held outside of the business in which the taxpayer was engaged (161-162). As to promissory notes, he said that they were reported very largely by corporations and business concerns and were taken for past due indebtedness. He was not able to throw any light on the nature of promissory notes

by individuals (163). As to chattel mortgages, he said that the items in the lists represented "very largely"—"practically all" mortgages taken by furniture and automobile companies to secure deferred payments on sales of those articles (164-165, 170-171). As to book accounts, he said that they represented, almost entirely, sums remaining unpaid on May 1st on account of merchandise previously sold. And generally, he said that the lists of money and credits upon which assessments were made in Ramsey County did not include money and credits "in the hands of such concerns as investment houses"; that only two small investment houses were to be found in the money and credits lists in 1921 and 1922, the highest return of one amounting to \$14,790.00, the other \$94,100.00 (165-166, 169-170).

The additional testimony in the case, relating to the assessment of money and credits at the three mill rate, dealt also with the mortgage registry tax, and its effect on national banks. Apparently its main purpose was to trace into the hands of individual residents of Ramsey County and the State investments made by them in promissory note, bonds and mortgages, thereby identifying in some measure, at least, the exact nature of the items which must have been reported by individual taxpayers under those heads. In this way there came into the record, casually, descriptions of some investment concerns and their activities. We state the evidence emphasizing that which describes such enterprises and undertake to summarize the showing in that respect.

INVESTMENT COMPANIES.

The following investment companies were described or referred to:

The Wells-Dickey Company was a Minnesota corporation having its principal place of business in Minneapolis with capital stock of \$1,200,000 (19). It was engaged in the business of dealing in bonds and mortgages. In 1921 it negotiated real estate loans almost wholly outside Minnesota, and sold mortgages through travelling salesmen and branch offices over the whole United States, but mostly in the Northwest and in Canada. In 1922 it negotiated mortgages only for the Metropolitan Life Insurance Company of New York (21). It bought and sold bonds, in both years, dealing with banks both in buying and selling, but mostly with individuals (31). Its bond sales in Minnesota for 1922 amounted to at least thirteen million dollars (21-24). It was estimated that mortgages which it had disposed of and which remained outstanding on May 1, 1921, amounted to more than \$25,000,000 (21).

The Investment Service Company of St. Paul, a Minnesota corporation, capital \$50,000, was engaged in the business of aiding people in their financial affairs, and it negotiated real estate mortgages and bought bonds for its customers (80). The mortgage loans previously so negotiated and outstanding in 1921 and 1922 aggregated about \$1,100,000 (81).

The Provident Loan Society of St. Paul, a Minnesota corporation, capital \$50,000, was engaged in the business of loaning money in small amounts to wage earners for the purpose of protecting them against "loan sharks". It was essentially a benevolent institution (173, 174).

In Exhibit R (371) is reference to "three of the larger cattle loan and investment companies" operating in Minnesota.

There was testimony that one of these cattle loan and investment companies was a Minnesota corporation having its principal place of business in Ramsey County (194). It had some connection with the Capital National Bank of St. Paul and the Capital Trust and Savings Bank of St. Paul (194). There is no testimony as to the capital of any of the companies referred to in this exhibit, nor is the nature of their business described further than as may be inferred from the exhibit that they deal in "cattle loan paper." The assessor said that he did not know there were any cattle loan companies in Ramsey County (172).

Exhibit I (370) is a summary of "dealings in local investment market" as compiled from sales reported to the Federal Reserve Bank in Minneapolis by "different investment houses located in the Twin Cities." The testimony was that these reports of sales came from eighteen investment houses located in the Twin Cities (185). Eleven were Minnesota corporations (185). Trust Companies were included in this classification. Banks were not, except possibly savings banks (191-192).

The county assessor said that he knew of only two investment companies which had made returns of money and credits for taxation. Their returns were, for 1921, \$11,860, and \$61,640, respectively, and for 1922, \$14,790 and \$94,100, respectively (165, 166).

The president of defendant bank said that he had taken at random eleven statements of borrowers of the bank and found nearly a million and a half dollars loaned to them by their officers or employees (204). The head of one corporation apparently a client of the bank said that sometimes officers and employees of the company had small deposits with it, but that they did not want any such loans. The average amount so deposited was between one hundred thousand and one hundred

and fifty thousand dollars. He said a large part of that would represent commissions of salesmen, which were not collected until the end of the year (119, 120). Another said that his corporation carried accounts for its employees, for the purpose of fostering savings among its employees (126). Another in stating the sources from which the corporation borrowed money said that occasionally "we call on our deposit and house accounts where officers and employees will leave their money on deposit." He said the average of the account would be between one hundred thousand and one hundred and fifty thousand dollars (130, 131).

We are unable to glean from the record any other evidence concerning the existence, nature, operations, capital, or amount of taxes paid by any individual or corporation engaged in any form of investment business, except that hereafter to be stated under the headings "note brokers" and "trust companies."

NOTE BROKERS.

There was testimony from many sources showing that "note brokers" loaned to commercial houses in St. Paul and elsewhere in the state great sums of money aggregating annually as much as one hundred million dollars (111, 125, 128, 130, 131, 136, 203). It was asserted that as much as fifteen million dollars was so loaned in St. Paul (203). The president of the defendant bank said that these note brokers were in competition with his bank and all other banks (204, 212). These note brokers, it was said, sold the "commercial paper" which arose out of these loans, mostly to banks, although they sometimes offered it to individuals and to some extent it was bought by them (100, 114, 115, 125, 133, 134, 178, 179, 205).

One witness said there were at least two note brokers in Minnesota (109); they were corporations (114). Another wit-

ness said that he dealt with "two firms", "one firm in New York and one firm in Minneapolis and St. Paul" (128). The president of defendant bank said that there were note brokers in St. Paul and Minneapolis, but did not describe or identify them. He declared that the principal note brokers were in Minneapolis (205, 206). The auditor of the bank said that there were corporations in Minnesota dealing in commercial paper and that the capital stock of one of them, Lane, Piper & Jaffray, having its principal place of business in Minneapolis, amounted to \$250,000 (190, 191).

There was no other testimony relating to the identity, nature, location or capital of note brokers, or as to where, or in what amount, they were taxed.

MORTGAGES.

During the eleven months ending June 30, 1921, mortgage registry taxes paid in Minnesota amounted to \$461,406.58. The value of the mortgages, if all were given for a period longer than five years and sixty days, was, therefore, \$184,560,000; if all were given for periods less than five years and sixty days, their value was \$307,600,000 (153). Probably the latter sum is nearer the actual value. For the year ending June 30, 1922, mortgage registry taxes paid in the state amounted to \$529,923.47 (153). The value of mortgages given was, therefore, somewhat larger than in the previous year. To arrive at the value of mortgages outstanding, and held by individuals or corporations at any given time, the amount of those registered must be multiplied by some figure, probably more than three, representing the average life of such mortgages.

In 1921, mortgages registered in Ramsey County, and owned by residents of Ramsey County, amounted to \$6,351,105. For

the same period such mortgages in favor of Minnesota corporations, except savings banks and trust companies, amounted to \$3,537,942 (147); in 1922, to April 30, such mortgages registered in favor of individual residents of Ramsey County amounted to \$2,204,351, and those in favor of Minnesota corporations amounted to \$996,113 (147).

The testimony relating to dealers in mortgages referred almost exclusively to the operations of banks and of trust companies taxed as banks. The exceptions were Wells-Dickey Company of Minneapolis, and the Investors Service Company of St. Paul, heretofore described.

In Exhibit Q (370) heretofore referred to, compiled from the Federal Reserve Bank's "summary of local investment market" it is indicated that real estate mortgages were sold by different investment houses located in the Twin Cities including trust companies (191, 192), as follows: In 1921, farm mortgages, \$10,891,470; city mortgages, \$3,144,599; and in 1922, farm mortgages, \$10,103,990; and city mortgages, \$6,582,592.

There was testimony as to the manner of making real estate mortgage loans. It was the practice of the Wells-Dickey Company to make these loans through banks in whose territory the land lay, completing the loans in its Minneapolis office and leaving the collection of interest and principal to the local banks (20). The Capital Trust & Savings Bank received its applications for loans through such local banks. The testimony was that the local "bank handles the larger port of its farm loan business through such a connection" (141). The Merchants Trust & Savings Bank got its mortgages in quite a similar way and the loans were completed in the local bank. It was said that the trust company received in this way, the loans over and above those which the local banks were able to make for themselves (98, 99). Loans of the Southern Minne-

sota Joint Stock Land Bank were made through local bankers. When applications were made directly to the land bank, a local bank was called upon to close the loan and was credited with the application and was paid its commission as if the application had been made to it (87, 88). There was no testimony indicating that any different practice prevailed with any other company. City loans were made, of course, directly to borrowers, but city loans for periods not exceeding one year, to which national banks are limited, were negligible (61, 62, 141). Relatively, mortgage loan investments by national banks in Minnesota were small. Their aggregate investments over the state were, in 1921, \$19,713,000 (Exhibit N, 365) and in 1922, \$25,409,000 (Exhibit N, 366). St. Paul national banks in 1921 held only \$339,000 of mortgage loans and in 1922 only \$377,000 of such loans (Exhibit N, 365, 366). The First National Bank of St. Paul did not loan any money on real estate mortgages and did not deal in them (217, 218).

TRUST COMPANIES.

Defendant did not in its answer allege that Sec. 5219 was violated in the taxation of trust companies, (other than those receiving deposits), on a gross earnings basis. In its arguments and in its briefs below it made that contention. The trial court ruled against the bank by finding that various trust companies were affiliated with national banks, particularly because defendant bank and the Northwestern Trust Company of St. Paul were affiliated (269-270). The Supreme Court made no ruling on the subject.

There were in the whole state on June 30, 1921, twenty-six trust companies (Exhibit C, 350, 351) and twenty-seven such companies on April 27, 1922 (Exhibit E, 354, 355). Fifteen of

these were taxable on the "gross earnings basis" (Exhibit J, 360). The testimony refers to three St. Paul trust companies and Exhibit J names two more which were located in St. Paul. Only two Minneapolis trust companies are referred to in the record. The aggregate capital of trust companies over the state was, in 1921, \$7,647,907.42 (Exhibit C, 351); in 1922, \$8,054,380.44 (Exhibit D, 355). The aggregate capital of the trust companies paying gross earnings taxes was \$2,135,000, of which \$1,000,000 was represented by the Northwestern Trust Company of St. Paul (Exhibit J, 360—date does not appear). All trust companies other than those named in Exhibit J were taxed, because they received deposits as if they were banks.

The capital and surplus of the Northwestern Trust Company of St. Paul amounted, in 1921, to \$1,253,217 (145); in 1922, to \$1,480,000 (63, 64). Eighty-seven per cent of its capital stock was owned by shareholders of defendant bank. Five or six per cent more of its stock was held in trust funds in the hands of the trust company itself. The stock of the defendant bank and this trust company were held "practically in the same ownership" (68, 69, 74). It was shown, for 1921, that the gross earnings tax on this company was much smaller than would have been a tax calculated at the bank rate on the value of its shares. There was no like showing for 1922; and there was no similar showing for either year as to any other trust company in the county or state.

Each witness who was asked whether trust companies and banks were competing institutions made clear his belief that the two classes of institutions occupied essentially different fields and were not in a practical or business sense in competition (40-43, 103-142).

We see no occasion to set forth the facts respecting the remaining St. Paul trust companies further than to state that

both of those concerning which there was testimony were connected or affiliated with national banks in St. Paul, and that because they received deposits they were taxed as banks. There is no mention in the record of the activities of the two remaining companies referred to in Exhibit J (360) supra.

STATE BANKS.

On June 30, 1921, there were 1160 state banks in Minnesota other than savings banks and trust companies. Their aggregate capital funds were \$42,598,042 (computed from Exhibit C, 350). They held United States bonds of the value of \$13,369,840.32 (Exhibit C, 350). On April 7, 1922, there were 1144 such banks. Their aggregate capital funds were \$41,566,624 (computed from Exhibit E, 355). They held United States bonds of the value of \$9,830,679.57 (Exhibit E, 354). Their investments in state and municipal bonds were not shown.

In Ramsey County, on May 1, 1921, the aggregate capital funds of state banks, after deducting real estate, were \$1,840,540.39. Their investments in tax exempt United States, state and municipal bonds amounted to \$2,109,471. For 1922, their capital funds were \$1,615,915.19 and their tax exempt bonds were \$1,750,860 (Exhibit S, 372, 373, and computations therefrom).

In 1921 there were 340 national banks in the State of Minnesota. Their aggregate capital funds were \$73,870,000. They held United States Government bonds of the value of \$41,190,000. In 1922, there were 343 national banks in the state with aggregate capital funds amounting to \$74,295,000. Their investments in Government bonds amounted to \$49,505,000 (computed from Exhibit M, 363, 364).

In 1921, national banks in Ramsey County had capital funds aggregating \$11,133,090.52, and bonds amounting to \$8,605,854.80. In 1922, their capital funds were \$11,810,660.76, and tax exempt securities amounted to \$17,815,740.36 (Exhibit S, 372, 373).

But the testimony was, without dispute, that neither in 1921 nor 1922 did any state bank, anywhere in the state, deduct from the value of its stock any sum whatever on account of investments in any tax exempt bonds or securities (249-251).

PURPOSE AND EFFECT OF MONEY AND CREDITS LAW.

The State offered evidence aimed to show that the Money and Credits Law was not enacted in hostility to national banks, nor in hostility to state banks, or their shareholders. The report and recommendation of the tax commission, a part of which appears as State's Exhibit 4 (389-392), presented to the legislative session of 1911, was received in evidence for this purpose. In brief, the commission expressed the opinion that the attempted taxation of money and credits at regular ad valorem rates had always and everywhere failed, and that property of that kind could be made to yield more revenue if assessed at a low flat rate. The Law of 1911 obviously was framed and adopted pursuant to that recommendation. And the state offered evidence tending to show that over the whole state, and in Ramsey County, the reduction of the tax rate to three mills produced, after the first year, more in taxes than the State or County previously were able to collect at much higher rates. The collections since 1907 to and including 1922, (State's Exhibit 5, 393) were as follows:

For the Entire State.

Year	Amount of Assessment	Rate of tax in Mills	Amount of Tax
1907	\$ 18,559,999	25.91	\$ 480,864
1908	14,647,763	26.98	395,197
1909	13,244,942	27.79	368,077
1910	13,919,806	28.	379,754
1911	115,676,126	3	347,025
1912	134,826,568	3	404,477
1913	156,252,274	3	468,760
1914	197,625,914	3	592,878
1915	213,078,632	3	639,249
1916	223,858,138	3	671,831
1917	285,662,756	3	856,993
1918	330,270,597	3	991,446
1919	359,112,619	3	1,079,973
1920	443,092,869	3	1,329,365
1921	425,745,839	3	1,277,365
1922	400,960,331	3	1,202,878

For Ramsey County.

Year	Amount of Assessment	Rate of tax in Mills	Amount of Tax
1907	\$ 1,382,813	29.25	\$ 40,447
1908	849,692	32.20	27,360
1909	991,671	33.49	33,211
1910	2,756,850	30.20	83,251
1911	24,410,381	3	72,231
1912	25,595,161	3	76,785
1913	34,571,164	3	103,714
1914	41,860,131	3	125,580
1915	43,352,616	3	130,058
1916	48,704,976	3	146,115
1917	62,641,448	3	187,924
1918	72,337,666	3	217,013
1919	76,867,049	3	230,601
1920	90,788,455	3	272,365
1921	84,093,488	3	252,281
1922	83,601,268	3	250,804

It is helpful to show these results in comparison with taxes on shares of national banks over the State and in the County.

Revenues received by the State, for exclusively state purposes, in the years for which statistics are available, from shares of national banks, and from money and credits, were as follows:

Year	Shares	Money and Credits
1907	\$ 48,768	
1908	50,113	
1909	43,876	
1910	45,834	
1911	67,708	\$ 57,837
1912	64,309	67,412
1913	101,563	78,126
1914	81,831	98,813
1915	63,324	106,541
1916	67,111	111,971
1917	93,950	142,832
1918	69,132	165,241
1919	165,966	174,995
1920	117,764	221,560
1921	102,488	212,873
1922	100,405	200,479

These figures are from State's Exhibit 7, (395), and State's Exhibit 5, (393). The state revenue from money and credits is one-sixth of the whole, and is so calculated from Exhibit 5. The receipts of the state from taxes on money and credits prior to 1911 are not shown. The total of such taxes collected for state and local purposes were as follows: 1907, \$480,864; 1908, \$395,197; 1909, \$368,077; 1910, \$379,754. State's Exhibit 5, (393). They were decreasing.

Taxes collected in Ramsey County on shares of national banks and money and credits, were as follows:

Year	Shares	Money and Credits
1907	\$ 85,315	\$ 40,447
1908	101,747	27,360
1909	105,425	33,211
1910	102,873	83,251
1911	106,095	72,231
1912	109,965	76,785
1913	170,931	103,714
1914	186,272	125,580
1915	194,425	130,058
1916	156,776	146,115
1917	174,694	187,924
1918	194,512	217,013
1919	283,836	230,601
1920	301,065	272,365
1921	294,219	252,281
1922	285,070	250,804

These figures are from State's Exhibit 5, (R. 393), and State's Exhibit 6, (R. 394).

EQUALITY OF TAXES ON BANK SHARES AND TAXES ON MONEY AND CREDITS.

And the state undertook to show that taxes on shares of national banks were about equal to three-tenths of one per cent of their resources—that is, they were about equal to a tax of three mills on the money which the banks controlled and used in making their loans and investments.

In 1921, defendant's resources were \$46,015,545.29. In 1922, they were \$52,927,523.88. The taxes actually charged against shareholders, and three mills of resources, were:

	1921	1922
Defendant's taxes	\$160,859.54	\$160,591.26
Three mills	138,046.63	158,782.58

(These calculations are based upon State's Exhibit T, R. 374.) The taxes upon shareholders are those actually assessed. (Findings of trial court, 331.) Three mill taxes are calculated by subtracting tangible resources from total resources and applying the three mill rate.

For Ramsey County a similar comparison is, based on Exhibit M, (363) :

	1921	1922
Taxes on bank shares	\$294,219.00	\$285,070.00
Three mills	306,342.00	322,299.00

For the whole state the comparison is:

	1921	1922
Taxes on bank shares	\$1,279,418.00	\$1,302,409.00
Three mills	1,551,431.00	1,586,142.00

In this calculation, Exhibit M is again used, and in arriving at taxes on shares the average tax rate for the state, 52.67 mills in 1921, and 54.23 mills in 1922, is used.

ASSIGNMENTS OF ERROR.

1. The Supreme Court of Minnesota erred in holding that "credits in the form of interest-bearing demands and money invested in loans or securities, whether such investments are of a permanent character or for a temporary purpose" * * * "are deemed moneyed capital used in competition with national banks within the meaning of Section 5219" (R. 314).

2. The Supreme Court of Minnesota erred in holding that "shares of stock held by individuals in corporations the business of which is the making of profit by using their capital as money, that is, by loaning it at interest or investing it in interest bearing securities, are deemed money capital used in competition with national banks within the meaning of Section 5219" (R. 314).

3. The Supreme Court of Minnesota erred in holding that "surplus funds are moneyed capital" and "that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities, whether as permanent personal investments or for temporary purposes, brings them in competition with national banks within the meaning of Section 5219 as it stood prior to the amendment of 1923" (R. 316).

4. The Supreme Court of Minnesota erred in determining that the evidence showing that individual citizens held large amounts of notes, bonds, book accounts and interest bearing securities, and that they were assessed on them at the rate of three mills on each hundred dollars of value, required a finding that moneyed capital in the hands of individual citizens coming in competition with national banks was assessed at a lower rate than bank shares in violation of Section 5219 (L. 323).

ARGUMENT.

The issue here is one of law, not of fact.

There is in the case the formal, general finding of fact that during 1921 and 1922 a substantial portion of the money and credits listed in Ramsey County consisted of moneyed capital in the hands of individual citizens of said County coming in competition with the business of national banks in the county, which was taxed at a lower rate than shares of national banks (33). This finding deals only with moneyed capital alleged to have come under the operation of the Money and Credits Act.

It may be claimed that this finding binds this Court and may not be reviewed. We submit, however, that it is not truly a finding of fact, or at most, is one so dependent upon the issue of law as to be in substance and effect a decision on the law question. This is made perfectly clear by a consideration of the proceedings below and the comments of the Supreme Court respecting the case.

The trial court first found that no substantial part of the money and credits listed in Ramsey County in 1921 and 1922 consisted of moneyed capital coming in competition with national banks. In the Supreme Court this finding was treated as an application of an erroneous interpretation of Section 5219 to facts which were undisputed. Almost at the beginning of the opinion the Court said:

"The facts are undisputed and the controversy is in respect to the conclusions to be drawn therefrom." (309.)

Later it said:

"It appears from the undisputed testimony drawn out by the plaintiff that nearly all the above mentioned bonds held by individuals represented investments made by such individuals out of their surplus funds." (316.)

And finally it said :

"The undisputed and unquestioned facts shown by the record convinces us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of Section 5219 as interpreted by the Supreme Court of the United States." (323.)

The Court's statements of applicable principles of law bear out our assertion. It said, after reviewing some of the decisions of this Court :

"As we understand these decisions, credits in the form of interest bearing demands and money invested in loans or securities, whether such investments are of a permanent character or for a temporary purpose, and also shares of stock held by individuals in corporations, the business of which is the making of profit by using their capital as money, that is, by loaning it at interest or investing it in interest bearing securities, are deemed moneyed capital used in competition with national banks within the meaning of Section 5219." (314.)

And again :

"Plaintiff urges that personal investments of surplus funds should not be deemed to have been made in competition with the banks, and that only a comparatively small part of promissory notes and book accounts is held by individuals. Surplus funds are moneyed capital; and the Federal Courts, if we understand their decisions correctly, have repeatedly held that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities, whether as permanent personal investments or for temporary purposes, brings them in competition with national banks within the meaning of Section 5219 as it stood prior to the amendment of 1923." (316.)

Obviously, these views compelled the conclusion and required a finding that individual citizens of Ramsey County held and listed for taxation moneyed capital coming in competition with national banks in violation of Section 5219.

The case went back to the trial court for proceedings consistent with the views so expressed by the Supreme Court. It was resubmitted upon the original record and thereupon the Court reversed its original findings and made the finding now under consideration. The State then appealed, and the Court said: "The questions presented are those decided by this Court on an appeal by the defendant from an order denying a new trial," and the judgment was affirmed, *per curiam*, on the grounds set forth in the opinion from which we have quoted. (343.)

The finding, therefore, is that in 1921 and 1922 there was a substantial amount of money and credits listed for taxation in Ramsey County which consisted of money capital coming in competition with national banks, within the meaning of the term "coming in competition with national banks" as the Supreme Court of Minnesota conceived it to be and stated it to be, that is, that there was a substantial amount of bonds so listed for taxation by individuals, and possibly that there was a substantial amount of promissory notes and book accounts so listed which represented purely personal investments of surplus funds in interest bearing securities. And involved in the finding is the theory of law that bonds, and possibly notes and book accounts, are *per se* moneyed capital coming in competition with national banks.

The finding is one in name only and the ruling of law which it carries is open to review.

The demonstration of this comes in merely pointing out that the facts recited by the Supreme Court, and upon which the decision rests, are not open to dispute, and are not disputed

here. If the Court's view of the law was right, the general finding was fully justified. If it was not right, the finding would not have been, and could not have been, made. Plainly there was a decision on an issue of law. At most the issue was one of mixed law and fact.

This Court in *Kansas City S. R. C. vs. Albers Com. Co.*, 223 U. S. 573, 591, said:

"We may examine the entire record, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependant upon such questions of law as to be in substance and effect a decision of the latter."

In *Truax vs. Cardigan*, 257 U. S. 312, the Court said:

"Another class of cases in which this Court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question, to analyze the facts."

In *Aetna Life Insurance Company vs. Duncan*, 266 U. S. 393, 389, 394, this Court said:

"The rule is settled that the decision of a state court upon these questions of fact ordinarily cannot be made the subject of inquiry here. See, for example, *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, 639, 42 L. ed. 878, 887, 18 Sup. Ct. Rep. 488; *Smiley v. Kan.*, 196 U. S., 447, 453, 454, 49 L. ed. 546, 550, 25 Sup. Ct. Rep. 289."

"To this general rule there are two equally well-settled exceptions: '(1) Where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.'"

THERE WAS NO EVIDENCE THAT A SUBSTANTIAL AMOUNT OF
MONEYED CAPITAL, WITHIN THE MEANING OF SEC. 5219,
WAS TAXED IN RAMSEY COUNTY OR IN MINNESOTA
AT A LOWER RATE THAN BANK SHARES.

The decision here under review rests essentially, if not wholly, upon the theory that personal investments of surplus funds in bonds and like securities, by individuals, whether engaged in any investment business or not, are to be deemed moneyed capital coming in competition with national banks within the meaning of Section 5219. The Court indicated, further, that in its opinion similar investment by corporations, regardless of the nature of the corporate business, made shares of the corporation moneyed capital in the hands of their owners within the meaning of that section, although plainly this view was not a factor in the decision.

But this Court, pending this appeal, has made clear, if it had not previously done so, the error of such an interpretation. In *First National Bank of Guthrie Center v. Anderson*, 269 U. S. 341, all doubt on the subject was so decisively removed that there is no need to refer to the earlier decisions. The parts of the opinion most pointedly dealing with the question decided by the Minnesota Supreme Court, say:

"The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile Nat. Bank v. New York*, supra, 157 (30 L. ed. 902, 7 Sup. Ct. Rep. 826); *First Nat. Bank v. Chehalis County*, 166 U. S. 440, 461, (41 L. ed. 1069, 1078, 17 Sup. Ct. Rep. 629)."

"Moneyed capital is brought into such competition where it is invested in shares of state banks or in private bank-

ing; and also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment. *Mercantile Nat. Bank v. New York*, supra, 155-157 (30 L. ed. 901, 902, 7 Sup. Ct. Rep. 826); *Palmer v. McMahon*, 133 U. S. 660, 667, 668, (33 L. ed. 772, 775, 776, 10 Sup. Ct. Rep. 324); *Talbott v. Silver Bow County*, 139 U. S. 438, 447, (35 L. ed. 210, 213, 11 Sup. Ct. Rep. 594)."

* * * *

"It, of course, would exclude bonds, notes or other evidence of indebtedness when held merely as personal investments by individual citizens not engaged in the banking or investment business, for capital represented by this class of investments is not employed in substantial competition with the business of national banks."

The only point, therefore, decided below in favor of defendant went contrary to the decisions of this court, and if the judgment is to stand the affirmance must be upon the ground that the evidence was such as to require a finding and determination here that a substantial amount of moneyed capital employed as in the banking or investment business was taxed at a lower rate than bank shares. We submit no such showing was made. We shall consider the evidence, from this view point, first as it related to individuals, and then as it related to corporations, since it may be that shares of corporations constitute moneyed capital in the hands of individual owners.

The evidence as to individuals was that large amounts of bonds and mortgages were bought in the state and county, and that individuals listed for taxation large amounts of money, promissory notes, bonds, chattel mortgages, book accounts and the like, but there was no evidence tending to show that any

of the securities so bought, or so listed for taxation, were held or employed by any individuals in the banking or investment business, or in any other business. The testimony of the assessor, as far as it went, was to the contrary. If, in saying that there were only two investment concerns represented in the money and credits tax list, he had reference to individuals or partnerships engaged in that business, the sufficient answer is that their assessments were so insignificant in amount as not to be worthy of comment.

There were incidental references to note brokers. No one stated that these note brokers were individuals. The various witnesses probably had in mind identical brokers. One witness referred to them as "firms"; another witness said that both brokers with whom he dealt were corporations. Only one such broker was identified by them, that one, Lane, Piper & Jaffray, was a corporation. There was no testimony whatever indicating the amount of moneyed capital employed by any individual broker. It cannot be said, therefore, that there was any testimony that any individual citizen of the state employed capital in conducting a note brokerage business.

There was testimony explanatory of Exhibit Q (370), that "the other seven firms" reporting sales of securities to the Federal Reserve Bank were branch sales offices of corporations in other states, or partnerships, or unincorporated companies of the state (192). Here the witness definitely undertook to state that there were certain partnerships and unincorporated companies of the state engaged in selling securities, and he plainly had in mind a distinction between corporations on one hand, and partnerships and unincorporated companies on the other hand. But he was unable to state how many of the seven firms were branch offices of corporations in other states;

and there was no testimony whatever concerning the moneyed capital of any partnership or unincorporated company referred to in the exhibit.

There was no other testimony whatever concerning any moneyed capital of individual citizens of Ramsey County or of Minnesota. It is clear, therefore, beyond dispute that there was no evidence upon which the Supreme Court of Minnesota could have found that "individuals", other than as shareholders, held any moneyed capital within the meaning of section 5219, as interpreted in *First National Bank of Guthrie Center vs. Anderson*, *supra*. Was there sufficient testimony to have justified or required a finding that individual shareholders held a substantial amount of such capital and that it was taxed at a lower rate than bank shares? There was no finding on such an issue in the state courts, and no decision respecting it. We respectfully doubt whether this court will or can hold that the case called for such a finding and decision.

Large amounts of bonds, mortgages and securities were, as indicated by Exhibit Q, and testimony explanatory thereof, sold in the Twin Cities by eleven corporations. These corporations were organized under the laws of Minnesota. There is no testimony whatever as to their identity, their places of business, or the nature of their business, except as may be inferred from the exhibit itself; particularly, there is no evidence whatever of the amount of capital employed by them. And there is no evidence as to what their taxes were. It appears affirmatively that some of them were trust companies. And hence it appears that some of them were taxed as banks. Some the testimony was, may have been savings banks.

It appears from Exhibit (R. 371), and testimony explanatory thereof (187, 193, 194), that three corporations sold in Minnesota a large amount of cattle loan paper. Two of these

were Minnesota corporations. One of them was connected or affiliated with the Capital National Bank of St. Paul. It also appears that while they sold cattle loan paper amounting, in 1921, to \$12,738,373.95, and in 1922, to \$9,945,556.67, their sales to individuals in Minnesota amounted to only \$580,665, in 1921, and \$365,083, in 1922, which, when taken in connection with the apparent relationship between one of these companies and a national bank, suggests that these corporations may have been agencies or instrumentalities of banks through which credit requirements of the livestock market of Minnesota, and the Northwest, were taken care of. Here, too, the corporations, with a single exception, are not identified. There is no description of their business, such as might help to determine whether they were in competition with the business of banking. There is no disclosure of the amount of capital employed by any of them and it does not appear in what amount any of them was taxed.

There was testimony that there were two corporate note brokers doing business in St. Paul. It does not appear to a certainty whether they were Minnesota corporations or foreign corporations, and there is no evidence of the amount of capital employed by them anywhere, or what or where they were taxed. One of the corporations so referred to may have been, and probably was, Lane, Piper & Jaffray, hereinafter referred to.

There was testimony that the financial reports, or credit statements, of eleven clients of defendant bank contained the information that they had borrowed from their officers and employees sums aggregating nearly \$1,500,000. We do not know definitely whether these concerns were corporations or individuals. It is fairly to be inferred that they were corporations engaged in commerce or manufacture, and that these

so-called loans represented balances due on salaries or commissions left by employees for safe keeping, or were deposits which were encouraged by employers in the promotion of thrift. Whether these concerns were corporations or individuals, we submit that under any of these theories the acceptance of such loans would not indicate that they were engaged in business similar to banking, nor did the testimony show the employment of any moneyed capital in any such business.

There is nothing in the foregoing testimony of any help whatever in determining whether the corporations referred to employed in any business competitive with banking any material amount of capital, or that such capital was taxed at a lower rate than bank shares, regardless of anything else which may be said of it.

There was testimony that Wells-Dickey Company of Minneapolis dealt extensively in bonds and mortgages. There was testimony that the Investment Service Company of St. Paul had negotiated for its patrons mortgages, which remained outstanding in 1921 and 1922, amounting to \$1,100,000. The Provident Loan Society of St. Paul was mentioned and the amount of its capital stock was stated, but since this corporation was obviously not a profit making enterprise, we will not refer to it again. And there was testimony that Lane, Piper & Jaffray of Minneapolis dealt in commercial paper. There was no testimony as to what other lines of business, if any, it engaged in.

The amount of the authorized capital stock of these three corporations appears incidentally in the record. There was no testimony, except that relating to banks and trust companies, as to the capital stock, or as to the capital, of any other corporation anywhere in the testimony or in the exhibits in this case.

So that, taking all of the testimony, there was definite proof that in 1921, \$84,093,438.00 (Exhibit 5, 393), was listed for taxation as money and credits in Ramsey County; shares of national banks of the value of \$14,689,000.00, with resources of \$104,145,000.00 (Exhibit M, 363), were listed for taxation at the ad valorem rate; and, only \$73,500.00 (166), of money and credits of "investment houses" was assessed at the three mill rate. In 1922, \$83,601,268.00 was listed for taxation as money and credits in the county; shares of national banks of the value of \$14,919,000.00, with resources of \$109,561,000.00, (Exhibit M, 363), were listed at the advalorem rate; and, only \$108,890.00 of money and credits of "investment houses" was assessed at the three mill rate (166). The record contains specific reference to the capital or capital stock of only one corporation having its place of business in Ramsey County, Investors Service Corporation, the capital stock of which was \$50,000.00.

For the whole state the proof was that in 1921, \$425,745,839.00 was listed as taxable money and credits (Exhibit 5, 393); shares of national banks of the value of \$73,870,000.00 with resources of \$530,286,000.00 (Exhibit M, 363), were taxable at the ad valorem rate, and, there was no showing whatever, except that made for Ramsey County, as to the listing of any money and credits of investment companies. In 1922, the total money and credit listings of the State were \$400,960,331.00 (Exhibit 5, 393); shares of national banks of the value of \$74,295,000.00, with resources of \$542,968,000.00 were taxable at the ad valorem rate (Exhibit M, 363); and, there was no showing as to listings by investment companies. In lieu thereof there was proof of the authorized capital of two companies, Wells-Dickey Company, \$1,200,000.00 and Lane, Piper

& Jaffray, \$250,000.00, which companies may or may not have been competitors for business with national banks.

We submit that there is no necessity for determining whether these three companies were or were not engaged in any business competitive with national banks, since relatively their capital was not material or substantial compared with the whole amount of money and credits taxable in the state or county, and was not material or substantial compared with the capital or resources of national banks in the state or county.

The amount is "comparatively small looking at the whole amount of personal property and credits which are the subjects of taxation; not large enough, we think, to make a material difference in the rate assessed upon national bank shares" (*Mer. Nat. Bank v. Mayor*, 121 U. S. 138, 161). Although the quotation deals with an exemption, and not with the capital of a corporation alleged to be a competitor of national banks, the Court probably would have made a similar declaration if the institutions under consideration were located in separate taxing districts, where only taxes for the support of the state government, relatively insignificant in proportion to the whole, were burdens shared in common by them. (See *Whitbeck v. Merc. Nat. Bank*, 127 U. S. 193, 198.)

COMPETITION.

We might well rest this case on the absence of proof of the existence of any substantial amount of capital competing with national banks in Ramsey County, and on the lack of any proof of the existence of any substantial amount of capital elsewhere in the state, since the burden to establish such facts was on defendant. (*Hepburn vs. School Directors*, 90 U. S. 480; *First National Bank of Garnett vs. Ayers*, 160 U. S. 665-667; *First National Bank of Wellington vs. Chapman*, 173 U. S. 205, 215; *Commercial National Bank vs. Chambers*, 182 U. S. 552, 560; *New York ex rel. Amoskeag Savings Bank vs. Purday*, 231 U. S. 373, 392).

But we feel compelled to point out that there may be no safe assumption that, because sales of large amounts of bonds and mortgages were reported to the Federal Reserve Bank at Minneapolis by investment houses of the Twin Cities, either those sales were made in competition with national banks or with defendant bank, or that substantial amounts of capital were employed in the business which made these sales possible, or that such capital came within the operation of the money and credit tax law.

Competition is not shown, we submit, merely by characterizing a corporation as "an investment company." There must be proof of the nature of the business engaged in (*Mer. Nat. Bank vs. Mayor*, 121 U. S. 138, 153, 156); and the business, whatever it be called, must be so similar to that conducted by banks, as to be competitive with banks; it must be such that if the corporations are favored in taxation as compared with taxes on shares of banks, the banks will suffer a disadvantage in carrying on their operations.

Stocks, bonds and mortgages may be bought and sold in large amounts without in any manner affecting banks or their investments. They may be bought and sold in large amounts without employing substantial amounts of capital in the operation. And certainly they may be bought and sold without the employment of any appreciable amount of capital which can be subjected to taxation.

Minnesota corporations are taxable on the property which they own on May 1st, of each year, and their shares are not taxed. There is no violation of Section 5219 in this (*People ex rel. Duer vs. Board*, 123 U. S. 83, 85; *San Francisco National Bank vs. Dodge*, 197 U. S. 70, 79).

If these corporations held for sale stocks of commercial, industrial, or public utility companies on that day, their rate of taxation, or whether they were taxed at all, would be a matter of no consequence under Section 5219 (*Mer. Nat. Bank vs. Mayor*, 121 U. S. 138, 153, 156; *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440). If they held large amounts of United States securities, the exemption of them from taxation would not offend against Section 5219. (*Bank of Redemption vs. Boston*, 125 U. S. 60; *Jenkins vs. Neff*, 186 U. S. 230, 235; *Des Moines Nat. Bank v. Fairweather*, 263 U. S. 103). If they held large amounts of municipal bonds, and were exempt from any taxation on them, there would be no violation of Sec. 5219 (*Mer. Nat. Bank vs. Mayor*, 121 U. S. 138). If they held large amounts of real estate mortgages, or bonds which were secured, as nearly all are, by real estate mortgages, and if those mortgages or bonds were exempt, in the avoidance of double taxation, that exemption, unless the rule has been changed since 1913, would not violate Section 5219 (*Hepburn vs. School Directors*, 90 U. S. 480; *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440,

461). And whether the rule respecting the taxation of real estate mortgages has or has not been changed, the manner of taxing them will be immaterial as against the objection of a bank which does not deal in mortgages, particularly where those dealing in them place their loans through banks. (See *First Nat. Bank of Guthrie Center vs. Anderson*, 269 U. S. 341.)

And this Court has held that certain classes of corporations may engage extensively in buying and selling bonds and mortgages without coming into competition with national banks. Trust companies buy and sell bonds and mortgages; yet this court has held that although they came in competition with national banks they are not within the meaning of Section 5219 (*Mer. Nat. Bank vs. Mayor*, *supra*; *Bank of Redemption vs. Boston*, *supra*; *Jenkins vs. Neff*, *supra*). Savings banks invest in bonds and mortgages and have been held not to be within the Section (*Mer. Nat. Bank vs. Mayor*, *supra*; *Bank of Redemption v. Boston*, *supra*; *Davenport Nat. Bank vs. Board*, 123 U. S. 83). And insurance companies, as a matter of common knowledge, buy huge amounts of bonds and mortgages, and are not deemed competitors of national banks (*Mer. Nat. Bank v. Mayor*; *Bank of Redemption vs. Boston*, *supra*).

It seems to us that the only conclusion which can be drawn from these cases is that, where it is asserted that an individual or corporation is engaged in a business which comes in competition with national banks, the claim is not established by proof, to say nothing of inference, that the business is one of buying or selling bonds or mortgages.

It may be urged that the rule is that whenever an individual or corporation deals in interest bearing securities, the capital used in such business will be deemed moneyed capital coming in competition with national banks merely because a fund is

held in the business use of dealing in such securities, and that whether the securities actually bought and sold are of the kind in which national banks may invest, or are of the kind in which the complaining national bank invests, is immaterial. We do not understand that the decisions of this Court may be so interpreted. Section 5219 aimed in a practical way to prevent discrimination against national banks. It did not undertake to say how the states should tax the moneyed capital of their citizens. The object of Congress was to prevent injury to national banks by making it impossible for the states to give their citizens such advantages in taxation as would hamper national banks in the business which they were authorized to conduct. So far as banks are concerned, whether the income of the individual investor comes from one source or another, can be of little consequence. Their concern arises only out of the manner in which investments of money or uses of money affect their business or earnings. And the use of capital in an investment business will have no effect whatever on them unless the capital is so employed as to reduce the earnings of banks or circumscribe their proper operations. To the extent that investment companies deal in stocks, bonds, mortgages, or other securities of a kind or class which national banks may not invest in, either as a matter of law, or, we submit, as a matter of sound banking practice, their capital is not within the scope of Section 5219, if the purpose of that section be to protect national banks against injurious tax legislation.

Whatever, therefore, may be the precise meaning of Section 5219, it is clear, we submit, that neither individuals nor corporations are to be deemed within its provisions unless their activities are such that a lower rate of taxation on their capital than that applied to bank shares will give them some advantage over national banks in the use which they make of it.

Certainly if in 1921 and 1922, individuals or corporations were actually engaged in competing with national banks in any substantial degree, if during those years national banks were suffering from competition of individuals or corporations and those individuals or corporations were being taxed in such a manner as to give them an advantage in that competition,—if, in a word, the condition which Section 5219 aims to prevent existed, the facts could have been shown. If defendant was appreciably affected by the activities of competitors in any phase of its business, it would have known who those competitors were, the nature of their business and the amount of capital employed by them; and the amount of taxes paid by them, if they were taxable in Minnesota, was readily ascertainable. The absence of such proof tends strongly to show that defendant was not at all affected in any of its banking operations by any such competition and suffered no disadvantage by reason of the operation of either the money and credits law or the mortgage registry law.

ONLY A BANK WHICH IS AFFECTED BY DISCRIMINATORY TAXATION MAY ASSERT A VIOLATION OF SECTION 5219.

It seems to us, that the rulings of this Court mean that when the laws of the state are assailed as producing discrimination forbidden by Section 5219, the proof must be that the bank which asserts discrimination suffers from it.

Albany County vs. Stanley, 105 U. S. 305.

Citizens National Bank vs. Kentucky, 217 U. S. 443.

The rule is that this Court will only determine the constitutionality of a statute in an action where its invalidity is asserted by one showing himself to be injured by its operation.

New York ex rel Hatch vs. Reardon, 204 U. S. 152, 160.

Darnell vs. Indiana, 226 U. S. 390, 398.

We see no reason why a different rule should prevail in determining whether a state taxing statute is in conflict with Section 5219.

Here defendant bank was obliged to show, but did not, that individuals employed moneyed capital in competition with the business which it rightfully conducted in St. Paul. If defendant bank did not invest in real estate mortgages, during the years 1921 and 1922, it was not prejudiced by the state's method of taxing mortgages or capital invested in mortgages; if it invested only in government bonds and listed bonds, it was not prejudiced in the state's method of taxing bonds, or capital invested in bonds, of any other class; unless, of course, its failure to invest in mortgages or other classes of bonds was caused by state tax legislation dealing with securities in those classes, of which there is no intimation or proof. If defendant did

not "deal" in bonds, that is, if it did not use its funds for the purpose of buying and selling bonds with a view to making a profit on the turn over, as clearly it did not, then it could not have been affected by the state's system of taxing those who did deal in them.

ARE CORPORATE SHARES MONEYED CAPITAL "IN THE HANDS OF
INDIVIDUAL CITIZENS"?

We have assumed that shares of corporations employing capital in competition with national banks will constitute moneyed capital in the hands of individual citizens. Of course, state banks and their shares are covered by the Act.

This court frequently has said that shares of stock in financial corporations may be moneyed capital in the hands of individual citizens, and that Section 5219 may be violated in the method of taxing corporations whose business is competitive with banking.

Hepburn vs. School Directors, 90 U. S. 480.

Mercantile Nat'l. Bank vs. Mayor, 121 U. S. 138, 156.

First Nat'l. Bank of Aberdeen vs. Chehallis County, 166 U. S. 440, 445.

Merchants Nat'l. Bank vs. Richmond, 256 U. S. 635, 639.

It never has had occasion, however, directly to decide such an issue. And we believe that there are no facts in this record requiring such a decision now. We merely point out that there are difficulties in the way of such a ruling. Nowhere more than in the interpretation and application of this Section has the Court more closely adhered to the theory that a stockholder has no ownership or title to the property of the corporation. Nowhere has it held more firmly to the doctrine that there is no identity between the shareholder and the corporation. Under such a theory there can be no difference between one who holds a share of stock in a financial corporation and one who holds a share of stock in a railway corporation. The shareholder in the financial corporation is not engaged in making investments in competition with banks any more than the

individual who holds railroad stocks is engaged in railroading; he simply has bought a share of corporate stock giving him the right to receive dividends if they are earned and to share in the assets of the corporation on its dissolution.

Bank Tax Cases, *Van Allen vs. Assessor*, 70 U. S. 573, 584.

Home Savings Bank vs. Des Moines, 205 U. S. 503, 515.

Des Moines Nat. Bank vs. Fairweather, 263 U. S. 103, 112-114.

The principal operations of national banks are obviously those of receiving deposits and making commercial loans. And almost total protection is afforded them against discriminatory taxation when individuals and corporations who compete with them in those activities are taxed at as high a rate as the banks or their shareholders. In the investments which banks may make, such as the buying of government bonds or other bonds, local taxes or tax rates are not a factor, since values are made in competition with investors in every community and in every state. This is demonstrated in the fact that national banks set themselves up in every city in the state and almost in every village, although tax rates vary in a marked degree in these different communities.

Corporations which engage in the business of receiving deposits are classed as banks and taxed as banks. (Private banking is not permitted in Minnesota.) And neither individuals nor corporations engage in the business of making commercial loans except as note brokers. The capital employed by brokers may be negligible, and as indicated in the testimony here, they engage chiefly in the occupation of making loans for banks in competition with other banks in different localities.

Furthermore, it will make no great practical difference whether corporations, dealing in stocks and bonds are taxed at a higher or lower rate than bank shares, in any state where taxes are levied under the so-called "ad valorem" system. And that system prevails over a large part of the country. Under such a system the corporation is ordinarily taxed upon its property or on its capital. And usually in the avoidance of double taxation, no separate tax will be levied on its stockholders. This is the system in Minnesota. If taxes are assessed upon capital, even though at the same rate as on bank shares, they may be largely, if not wholly, unenforceable because the capital of any such corporation may well be invested in Government, State, Municipal, or other tax exempt securities. And the same result may follow, although in a lesser degree, when taxes are assessed against the property of such a corporation.

We say, therefore, that little, if anything, in the way of practical protection is afforded by going beyond the letter of the law and holding that owners of stock in corporations, which deal in bonds or mortgage, are the holders of capital used in dealing in bonds and mortgages and come, or may come, in competition with the business of national banks.

THE MONEY AND CREDITS LAW DOES NOT VIOLATE THE SPIRIT
OF SECTION 5219, SINCE IT WAS NOT ENACTED IN HOSTILITY
TO NATIONAL BANKS AND IS NOT INJURIOUS TO THEM.

The Money and Credits Tax Law of Minnesota was not enacted in hostility to national banks, nor in a spirit of favoritism toward moneyed capital in any form. It was adopted for the purpose of collecting more taxes on money and credits than the state previously had been able to recover. In one of its major aspects then, it does not offend against the provisions of Section 5219. Its enactment followed the report and recommendation of the State Tax Commission, a portion of which is contained in the record (State's Exhibit 4, 389-392). The Commission advised the legislature that "the attempt to tax money, credits and securities at the same rate as other classes of property has everywhere and always proved a failure" (389). It said also that no small part of the intangible property to be taxed under the Act represented tangible property which already was taxed in Minnesota or elsewhere (390). But mainly the recommendation rested on the belief that a tax on this class of property at a low fixed rate would produce more revenue than could be collected under the existing system which endeavored to assess such property at the same rate as real and tangible personal property. And the results shown by the comparison of the receipts, both for the State and County before and after the passage of the Act, set forth in our statement of facts (page 23 to 25, Ante) justified the Commission's opinion.

Section 5219 was not aimed at legislation of this kind. If, accidentally, in the whole amount of money and credits brought within the scope of the law, there is caught a relatively insig-

nificant amount of capital coming in competition with national banks, not in the essential functions of such banks, but in respect of one or more of their privileges, the law is not one to be denounced under Section 5219. This Court has said:

"The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination against them of the power of state taxation."

Adams vs. Mayor, 95 U. S. 19, 22.

"As Congress was conferring a power on the States which they would not otherwise have had, to tax these shares, it undertook to impose a restriction on the exercise of that power, manifestly designed to prevent taxation which should discriminate against this class of property as compared with other moneyed capital. In permitting the State to tax these shares, it was foreseen—the cases we have cited from former decisions have showed too clearly—that the state authorities might be disposed to tax the capital invested in these banks oppressively."

People of New York vs. Weaver, 100 U. S. 539, 543.

"The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks was to render it impossible for the State, in levying such a tax, to create and foster an unequal and friendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the Act of Congress is to be read in the light of this policy."

Mercantile National Bank vs. Mayor, 121 U. S. 138, 155; also First National Bank of Wellington vs. Chapman, 173 U. S. 205, 213.

"According to the stipulation in this case, the deposits in such banks amount to \$437,107,501, with an accumulated surplus of \$68,669,001. It cannot be denied that

these deposits constitute money capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the Act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the State. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community. We have already seen that by previous decisions of this court it has been declared that 'it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt'—*Hepburn vs. School Directors*, 23 Wall. 480 (*supra*)—and that 'the Act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the Legislature chose to do so.' *Adams vs. Nashville*, 95 U. S. 19 (24:369). The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not

greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

Mercantile National Bank vs. Mayor, 121 U. S. 138, 160, *supra*.

"It is essential, if the law of the state is to be declared invalid under the limitations expressed in the United States statute, that the enactment of the legislature shall evidence a disposition to evade or override the spirit of the limiting statute."

Jenkins vs. Neff, 186 U. S. 230, 237.

"The objection made by the bank to the state's plan must rest not upon the mere fact that the depositors in national banks are taxed upon their credits, or that they are taken out of the system of local taxation, but upon the ground that the measure adopted is essentially inimical to national banks, frustrating the purpose of national legislation, or impairing their efficiency as Federal agencies."

"To be open to such an objection, it must appear that the scheme of taxation constitutes an injurious discrimination. * * * The object is to prevent hostile discrimination, and for that purpose a standard is fixed."

Clement National Bank vs. Vermont, 231 U. S. 120, 135.

"Its main purpose is to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a business similar to that of national banks, or engaging in operations and investments of a like character."

Des Moines National Bank v. Fairweather, 263 U. S. 103, 116.

National Banks or their shareholders have no meritorious ground of complaint in the result of the actual operation of

the law. Theoretically, taxes on moneyed capital were reduced by the terms of the Act; actually, they were increased. Theoretically, looking at rate numerals only, taxes on moneyed capital which might come in competition with national banks were reduced; practically, any moneyed capital which might come in competition with banks was compelled, or rather induced, to pay taxes where previously it had paid none. We say that previously it paid no taxes because virtually only money and credits in the hands of guardians, administrators, and the like, were reached for taxation before the enactment of this law.

On the whole, national banks shared with all other tax payers the beneficial provisions of this act, which resulted in the collection of more taxes from money and credits, thereby reducing the common burden.

THE TAX RATE ON SHARES OF NATIONAL BANKS WAS, FAIRLY
COMPARED, NO GREATER THAN THE TAX RATE ON
MONEY AND CREDITS.

Nowhere in the record is there any testimony as to the taxes actually charged against any investment company. It is assumed that taxes assessed against their property at the three mill rate were lower than taxes on bank shares. Even if this assumption were valid, the conclusions that, fairly compared, taxes upon these companies would be at a lower rate than taxes on bank shares, would not follow. All such corporations are taxed on all of the property which they own. They are not taxed upon their capital or upon their shares. For instance, their capital might be invested in an office building from which their business might be conducted. Its ownership could well give them any credit which they might need. Or they might, in order to multiply their purchases of securities, pledge them and repledge them so that their stocks and bonds, and foreign mortgages might be many times their invested capital, in which event their taxes even at the three mill rate might equal taxes on bank shares, there being no right of deducting debts under the Act. On the other hand, in the very nature of their business, their resources might be invested in tax exempt bonds, or stocks of Minnesota corporations, in which event there would be no application of the Money and Credits Law at all. And of this there could be no complaint under the provisions of Section 5219 (*Mercantile National Bank of New York vs. Mayor*, 121 U. S. 138, 160; *Des Moines National Bank vs. Fairweather*, 263 U. S. 103; *Jenkins vs. Neff*, 186 U. S. 230, 235). The record does not enable us to say what the three mill rate on the gross resources of any investment corporation equaled in rate per hundred dollars of

capital. We know the capital of only three corporations. There is no showing as to the resources of any corporation. We do not know what taxes any of them actually were required to pay. This, mainly, is why we say that there is no evidence whatever upon which the Court can declare that any moneyed capital, competing or not competing, was taxed at a lower rate than the tax on bank shares.

In order to determine whether or not moneyed capital of corporations which are assessed on their total resources is at a lower rate than taxes assessed against shares of a corporation, a comparison must be made either by taking the taxes on resources and ascertaining the rate which they would equal if assessed on shares, or by taking the rate on shares and ascertaining the rate which they would equal in taxes or resources.

The record does not permit making the first of these comparisons. The second can readily be made.

We have the resources, capital and taxes of defendant bank, and of all national banks in Ramsey County, and we have the resources and capital of all national banks in the State, and the average tax rate for the whole State. In our statement of facts (ante page 25) we have set forth the calculations based upon this evidence. They show that taxes assessed against shares of national banks were substantially equal to a tax of three mills on their resources. The aggregate resources of banks constitute their true capital, the capital to which they legally are entitled and which they possess and enjoy in the sense that they loan and invest it and reap the same harvest of interest and profit which any other individual or corporation may have of its own money or credits; "shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them * * * deposits constitute

a large part of the actual capital profitably employed by the banks in the conduct of their banking business." *Bank of Redemption vs. Boston*, 125 U. S. 60, 67. When we compare, in this way, banks and individuals, or banks and investment companies, consideration must be given the money or credits which enables either to make loans or to invest in securities. The resources of the banks and not merely their invested capital are employed for that purpose. Others may only employ such capital as they own and use in their business. If, therefore, we are to give effect to the spirit of Section 5219, the tax burden upon the invested capital of the private individual or corporation must be compared with the tax burden on the usable capital of national banks. As we have seen, if, and to the extent that competition between investment companies and national banks can be conceived of it occurs when such companies and banks come into the market and bid against each other in the purchase of interest bearing securities, such as bonds and mortgages. In this field the investment companies will employ their invested capital (together with such capital as they may borrow from banks, which need not be considered) and the banks will employ their resources, not merely their invested capital. There will be equality of competition, and the object of Section 5219 will be accomplished, if the capital which actually is used in bidding for or buying such securities bears equal tax burdens. And since the taxes which were charged against the shareholders amounted to no more than three mills on each dollar which the bank invested, there was no discrimination in favor of its competing investor who had to pay not less than three mills on each dollar which he invested.

This Court has declared that the Federal Act does not require merely equality of rates, that it commands equality of

taxes (*People v. Weaver*, 100 U. S. 539), that it has "to do with the actual incidence and practical burden of the tax payer" (*New York ex rel Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373); and it has clearly indicated that it will compare actual results in taxation for the purpose of determining whether taxes on bank shares are higher than taxes on competing moneyed capital (*Mercantile National Bank vs. Mayor*, 121 U. S. 138; *New York ex rel. Amoskeag Savings Bank vs. Purdy*, 231 U. S. 373 *Bank of Redemption vs. Boston*, 125 U. S. 60, 66; *San Francisco National Bank vs. Dodge*, 197 U. S. 70, 79, 81). We submit, therefore, that there is no evidence in the record showing that any corporation engaged in the investment business was taxed at a lower rate—that is, that taxes assessed against such corporations, if they had been charged directly against stockholders, were relatively lower—than taxes on bank shares. We submit that no discrimination was shown, within the meaning of Section 5219, in the taxation of bank shares at the 67 mill rate or the 61.5 mill rate, when actually that rate was but the equivalent of a rate of 3 mills on their moneyed resources.

OTHER DEFENSES OF THE BANK.

The decision of the Court below was based solely upon the operation of the Money and Credits Law. Defendant urged other grounds of objection, which either were not considered, as its contention relating to the operation of the gross earnings tax on trust companies, or were not decided, as its contention respecting the manner of taxing real estate mortgages, or were decided against it, as its contention that the manner of taxing state banks offended against Section 5219. We assume that each of these objections are open for consideration here and we discuss them, briefly, in their order.

TRUST COMPANIES.

It is contended that because trust companies were taxed at the rate of five per cent upon their gross earnings, and because a tax at that rate may be lower than the tax on bank shares, the Federal Act prevented the collection of the taxes assessed in this proceeding. The contention is based upon proof that in 1921 the Northwestern Trust Company of St. Paul paid gross earnings taxes amounting to \$15,832.22, when, if its taxes had been calculated as taxes on bank shares were, the taxes would have been \$27,762.51 (Exhibit J, 360, 155). There was no showing as to its gross earnings taxes for 1922. And there was no like showing as to any other trust company.

This Court has ruled that trust companies, while competing to some extent with national banks, are not within the meaning of the Federal Act.

Mercantile Nat. Bank vs. Mayor, 121 U. S. 138.

Bank of Redemption vs. Boston, 125 U. S. 60.

Jenkins v. Neff, 186 U. S. 230, 234.

The evidence, we submit, is not sufficient to establish satisfactorily that this system of taxing trust companies was unfavorable to national banks, although it undoubtedly operated that way in one year as to one company.

All of the witnesses who testified on the subject expressed on cross-examination the opinion that trust companies and banks were not in a practical sense competing institutions (40-43, 99-103, 142). On recross examination they said, in effect, that, since all capital was in competition, trust companies and banks were in competition. It is a significant fact that all the large trust companies in St. Paul were, in different degrees, affiliated with or connected with national banks. The Minne-

apolis Loan & Trust Company was so affiliated (269). Furthermore, all of the large trust companies in both cities, excepting alone the Northwestern Trust Company, received deposits and were taxed as banks.

The Northwestern Trust Company was affiliated with the defendant in error. Stockholders of the bank owned 87% of the stock of the trust company (68, 69) and six or seven per cent more of its stock was held in trust funds managed by the trust company.

So that the shareholders of the First National Bank are here contending that the Act of Congress was violated because a company beneficially owned by them was taxed at a lower rate than their bank shares. We submit that they will not be heard on such a complaint any more than they would be heard to complain that the taxes on their shares in the bank were too low. *Stanley vs. Albany County*, 121 U. S. 535, 549; *Bank vs. Fairweather*, 262 U. S. 103, 111.

MORTGAGES.

It is contended that mortgages are taxed at a lower rate than bank shares in violation of Section 5219. In the Court below the theory advanced was that all mortgages, however held or used, constituted moneyed capital coming in competition with national banks. We think that contention is foreclosed.

There remains the question whether the taxation of mortgages at the rate of 15¢ per hundred dollars on loans due within five years and sixty days and at the rate of 25¢ per hundred dollars on longer loans, insofar as it operates on persons or corporations engaged in the business of making and disposing of such mortgages, defeats taxation of shares of national banks at a higher rate. The Supreme Court of Minnesota said that prior to the Act of December 23, 1913 (38 Stat. 273) the failure to tax mortgages at the rate equal to bank shares was not a violation of Section 5219. It cited *Hepburn v. School Directors*, 90 U. S. 480; *Adams vs. Nashville*, 96 U. S. 19, and *Mercantile National Bank vs. Mayor*, 121 U. S. 138. *First National Bank of Aberdeen vs. Chehalis County*, 166 U. S. 440, 461, might have been added. Since 1913, national banks may, within prescribed limits, make loans secured by real estate. The Court said it was not necessary to determine the question and expressed no opinion on it (321). This Court did not definitely rule upon it in *First National Bank vs. Anderson*, *supra*.

There is no evidence that any individual in Minnesota was engaged in the mortgage loan business. There is testimony that certain trust companies, two investment companies and certain banks dealt in mortgages.

The Minnesota statute under which banks are taxed includes mortgage loan companies. The Supreme Court of Minnesota has never had occasion to determine what companies come within this statute. The Attorney General has been called upon to give an opinion in respect of only a single company and his ruling (not published) affecting the Provident Loan Company, referred to in the record, declared only that it did not include companies loaning on chattel security. It is probable that the Supreme Court of Minnesota will hold that any company dealing in real estate mortgage loans to such an extent as to come in competition with national banks is within the statute. This would dispose of the question as to all companies described in the record except the Northwestern Trust Company, which deals in mortgages to some extent, and which is not taxed under the statute relating to banks. What we have said of that company under the head "Trust Companies" applies here.

There is more to be said.

The First National Bank did not loan money on mortgages, nor deal in them (217, 218). It sometimes took notes and mortgages owned by country banks as collateral security (217), but the activity of others which puts country banks, or other patrons of the bank, in a position to borrow money of the bank can hardly be said to be one competitive with banking. And we are unable to see in the loaning of money on collateral mortgage security any substantial participation in the business of dealing in mortgage loans.

Again, in this record there is proof, in a large measure, of the fact that was assumed by the Supreme Court of Iowa in *First National Bank vs. Anderson*, supra. In every instance in which testimony was given as to the methods of negotiating farm mortgages, it was said that they were negotiated through

local banks. This was the practice of the Wells-Dickey Company (20), the Merchants Trust & Savings Bank (98, 99). The Capital Trust & Savings Bank (141), and the Southern Minnesota Joint Stock Land Bank (87, 88). In fact, one of the officers of the Land Bank said that any application coming to it, not originating with a local bank, was referred to one, and a commission was paid to a local bank on account of any mortgage originating in the bank's territory. And wherever there was any testimony on the subject, it was stated that the local banks were in charge of the collection of principal and interest on mortgages on their territory (87, 88). There was no testimony of any different practice. This was the practice as to farm mortgages. What testimony there was as to city mortgages declared that they come without banking participation. Banks may not loan on city real estate for a longer period than one year. The testimony was that such loans were undesirable from the standpoint of those dealing in mortgage securities and were negligible (61, 62, 141). So that if the amendment of 1913 operated to change the rule as to what constitutes competing moneyed capital as announced in the earlier decisions of this court, it could only change it as to farm mortgages, and as to farm mortgages investment companies act only as adjuncts of the banks. As to city mortgages there was and could be no material or substantial employment of moneyed capital in competition with the banks.

STATE BANKS.

Until 1921 the shares of state banks, national banks and mortgage loan companies (the last since 1905) were taxed under one statute, and all were taxed alike. In 1921, the law was amended so as to provide for the assessment of banks and mortgage loan companies directly, that is, the shares were not taxed but the corporations were. The method of determining the tax, the rate, and all other features remained precisely as before. It is claimed that this amendment resulted in discrimination in favor of state banks, because as a result, state banks thereby became entitled to deduct from their capital all investments in bonds of the United States Government, and the proof was that state banks in Ramsey County and in the State held large amounts of government bonds. The State Court merely said "we think that the method adopted is permissible under the doctrine of *People vs. Commissioners of Taxes*, 71 U. S. (4 Wall.) 244, 18 L. ed. 344; *Mercantile National Bank vs. Mayor, etv.*, 121 U. S. 138, 30 L. ed. 895; and *Des Moines National Bank v. Fairweather*, 263 U. S. 103, 68 L. ed. 191."

On the argument in the State Court, it was contended principally by counsel for the state that the evidence shut out any controversy on this question. And while submitting the question on the authorities cited by the State Supreme Court, petitioner relies principally now on the facts.

It was proved beyond dispute that during the years 1921 and 1922, each state bank submitted to taxation upon its whole capital. Each bank paid taxes assessed upon precisely the same basis as shares of national banks. There was no deduction anywhere of any amount invested in government bonds, or of any other tax exempt bonds. On the contrary, as the

record indicates, the only deduction claimed by any state bank was rested upon the assertion that because one of its shareholders was a charitable organization and exempt from taxation its taxes should be reduced accordingly, and this claim was allowed exactly as it would have been if shareholders, rather than the corporation, were taxable (251). The contention of the bank in this respect is that under the amendment of 1921 discrimination might have been practiced but was not.

We submit that where, as here, state banks actually paid taxes assessed on the same basis as shareholders of national banks, there can be no valid complaint based merely on the form of the law. What was done under the law, everywhere and as to every state bank, is controlling.

In *First National Bank of Gulfport vs. Adams*, 258 U. S. 362, 365, this court said, in determining whether taxes there assessed were on shares, or were assessed directly against the bank, "Where the validity of an assessment by officers of the state is properly challenged, and the matter comes here, this court must determine the effect of the thing actually done. What might have been done under the local statutes is not controlling."

We respectfully submit that on the whole record this case is not one showing a violation of Section 5219.

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APPENDIX.**Sec. 5219, R. S.**

Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

Sec. 5219, as amended. Act of March 4, 1923. (Chap. 267, p. 1499, Vol. 42, U. S. Stat. at Large.)

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided the following conditions are complied with:

"1. (a) The imposition by said State of any one of the above three forms of taxation shall be in lieu of the others.

“(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: PROVIDED, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

“(c) In case of a tax on the net income of an association, the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing, and business corporations doing business within its limits.

“(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

“2. The shares of the net income as above provided of any national banking association owned by non-residents of any State, or the dividends on such shares owned by such non-residents, shall be taxed in the taxing district where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

“3. Nothing herein shall be construed to exempt the real property of associations from taxation in any state or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section."

Approved, March 4, 1923.

MINNESOTA ACT TAXING SHARES OF NATIONAL BANKS AND
CAPITAL OF STATE BANKS AND MORTGAGE LOAN COMPANIES.

Chapter 416—H. F. No. 498 (Laws, Minn. 1921).

An act providing for the assessment and taxation of the shares of stock of banks organized under the laws of the United States and the moneyed capital of banks and mortgage loan companies organized under the laws of this State, and repealing Sections 2017 and 2020, General Statutes of 1913, and other acts inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. ASSESSMENT OF BANK STOCK.—The shares of stock of every bank in this State organized under the laws of the United States, and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located.

Sec. 2. ASSESSED AND TAXED AGAINST HOLDERS OF RECORD IN NAME OF BANK—TAX PAID BY BANK.—The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this State shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company.

Sec. 3. OFFICERS TO MAKE STATEMENT FOR ASSESSORS.—To aid the assessor in determining the value of the shares of stock of national banks and the value of the moneyed capital of state

banks and mortgage loan companies, the cashier or other accounting officer of every such bank or mortgage loan company shall furnish a sworn statement to the assessor, showing the amount and number of shares of the capital stock, the amount of its surplus, undivided profits and all other funds, and the amount of its legally authorized investments in real estate located in this State, which real estate shall be assessed and taxed in the same manner as other real estate. The assessor shall deduct the amount of such legally authorized investments in real estate from the aggregate amount of such capital. Surplus, undivided profits, and other funds, and the remainder shall be taken as a basis for determining the taxable value of the shares of stock of banks organized under the laws of the United States and of the moneyed capital of banks and mortgage loan companies organized under the laws of this State.

Sec. 4. TAX DEDUCTED FROM DIVIDENDS.—To secure the payment of taxes levied against the stockholders of banks organized under the laws of the United States every such bank shall, before declaring any dividend, deduct from the annual earnings of the bank such amount as may be necessary to pay any such taxes so levied against such stockholders, and such bank or the officers thereof shall pay the taxes and shall be authorized to charge the amount thereof to the expense account of such bank.

Sec. 5. INCONSISTENT ACTS REPEALED.—Sections 2017 and 2020, General Statutes of 1913, and all other acts or parts of acts, in so far as they are inconsistent herewith, are hereby repealed. But such repeal shall not affect the validity of any taxes levied or assessed by virtue of said sections and all such taxes shall be paid and proceedings for payment taken accord-

ing to the provisions of said sections and other laws in force at the time of the assessment and levy thereof.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved April 21, 1921.

MONEY AND CREDITS TAX LAW.

Chapter 285—H. F. No. 321. (Laws, Minn. 1911.)

An Act establishing a uniform tax on certain classes of personal property.

Be it enacted by the Legislature of the State of Minnesota:

TAXATION OF MONEY AND CREDITS.—Section 1. "Money" and "credits" as the same are defined in section 798 "Revised Laws of 1905" are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

But nothing in this act shall apply to money or credits belonging to incorporated banks situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907.

HOW LISTED.—Sec. 2. All "money" and all "credits" taxable under this act shall be listed in the manner provided in section 816 "Revised Laws of 1905," but such listing shall be upon a separate blank from that upon which other personal property is listed.

* * * * *

STATEMENT TO BE MADE UNDER OATH.—Sec. 5. The assessor shall in all cases require a person bringing in a list to make oath that it is as nearly correct as he is able to make it and this oath shall be attached to and be a part of such list.

Such list shall be open to the inspection of the assessor, county auditor, their deputies and clerks, the board of review, the board of equalization, their clerks, the Minnesota tax commission and its assistants and clerks, but the details of the lists made by tax payers shall be disclosed to no other person

except by order of court, and any assessor or other person who shall disclose such details shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars. The lists shall be delivered by the assessor to the county auditor and by him preserved.

ASSESSOR TO ACCEPT AS TRUE.—Sec. 6. The assessors shall receive as true except as to valuation, the list brought in by each person, unless on being thereto required by the assessor he refuses to answer on oath all reasonable and necessary inquiries as to the nature and amount of his property taxable under the provisions of this act.

* * * * *

APPORTIONMENT OF RECEIPTS.—Sec. 13. All taxes paid to the county treasurer under the provisions of this act shall be apportioned, one-sixth to the revenue fund of the State of Minnesota, one-sixth to the county revenue fund, one-third to the city, village or town and one-third to the school district in which the property is assessed.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved April 19, 1911.

DEFINITION OF "MONEY" AND "CREDITS".

1. "Money" or "moneys" shall mean gold and silver coin, treasury notes, bank notes, and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand. Sec. 798, Subd. 1, Rev. Stat., Minn. 1905.

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum

of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state. Chap. 130, Laws Minn., 1917.

MORTGAGE REGISTRY TAX LAW.

Chapter 328—H. F. No. 561 (Laws Minn. 1907, as amended by Chap. 445, Laws 1921).

An Act to provide for the taxation of mortgages of real property.

Be it enacted by the Legislature of the State of Minnesota:

MORTGAGE DEFINED.—Section 1. The words "real property," "real estate" and "land," as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words "mortgage," as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum.

Sec. 2. A tax of fifteen cents is hereby imposed upon each hundred dollars, or fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state executed and delivered after the passage and approval hereof and recorded or registered hereafter; provided that any such mortgage heretofore executed and delivered shall not be recorded in section 2 hereof as originally enacted; provided further that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee; and provided further that if the maturity of any portion of said debt secured by the said mortgage, as therein stipulated, shall be fixed at a date more than five years and sixty days after the date of said mortgage, then and in that case the tax to be paid on such portion shall be at the rate of twenty-five cents on each hundred dollars or fraction thereof. (As amended Chap. 445, Laws of Minnesota, 1921.)

IN LIEU OF ALL OTHER TAXES.—Sec. 3. All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes.

MORTGAGES IN TRUST.—Sec. 4. If a mortgage is made to a mortgagee in trust, to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount of such obligations already issued or to be issued forthwith, and the tax to be paid on filing such mortgage for record or registration shall be computed upon the amount so stated. Such statement shall be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed shall be valid for any purpose unless the additional tax thereon be paid and the receipt of the proper county treasurer therefor be endorsed thereon.

* * * * *

NOT RECORDED UNTIL TAX IS PAID.—Sec. 7. No such mortgage, no papers relating to its foreclosure, nor any assignment or satisfaction thereof shall be recorded or registered after April 30, 1907, unless said tax shall have been paid; nor shall any such document, or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise.

MORTGAGES—PROVISION.—Sec. 8. All mortgages of real estate recorded or registered prior to April 30, 1907, shall be taxable as provided by law under the provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county, or the state treasurer, or both, the tax herein prescribed upon the amount of the debt secured by such mortgage at the time of such payment, as stated by the affidavit of the owner of such mortgage, to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note

on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

TAX—HOW DISTRIBUTED.—Sec. 9. All taxes paid to the county treasurers under the provisions of this act shall be apportioned and distributed in the same manner as real estate taxes paid upon the real estate described in the mortgage.

Sec. 10. This act shall take effect and be in force from and after April 30th, 1907.

Approved April 23, 1907.

LETTERS FROM THE

No. 25

The Duke of Devonshire

First National Bank of St. Paul

LETTERS FOR MEMBERS

CLIFFORD L. SHAW
Secretary General

G. A. TOWNSEND
Asst. Secy. General

FATHER J. J. STANLEY
President of the Union

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 245.

THE STATE OF MINNESOTA,

Petitioner,

vs.

FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

PETITION FOR REHEARING

Now comes the above named petitioner and respectfully petitions for a rehearing herein on the following grounds:

This Court has held that because in Minnesota all moneys and credits are taxed at a rate of three mills per annum on their value, and because mortgages are not taxed there, but in lieu thereof a registry or recording tax is collected at rates of 15c per hundred and 25c per hundred dollars of value, and because of the proof of the existence in 1921 and 1922 of a large aggregate of money and credits and mortgages in the hands of individuals, the taxes assessed on bank shares of respondent at 67 mills and 61½ mills of forty per cent of the value of shares are invalid under Sec. 5219, R. S. and under that section as amended in 1923. The proof was (passing for

the present evidence relating to investment houses) that individuals held large amounts of bonds which they had purchased with their surplus funds, that is, funds not used in the business in which they were engaged. (R161,162.) Aside from this there was no characterization of the nature of purchases of mortgages or other investments by those who bought them; but it safely may be assumed that all such purchases were made and held as investments in the ordinary significance of that term. The Court holds that such investments constitute moneyed capital coming into competition with national banks.

We undertook no discussion of this phase of the decision either on the oral argument or in the brief, because of the declaration of the Court in *First National Bank of Guthrie Center vs. Anderson*, 269 U. S. 341, 350, where, speaking of competing moneyed capital within the meaning of Sec. 5219, and within the meaning of that section, as amended, in 1923, it said:

“It, of course, would exclude bonds, notes or other evidence of indebtedness when held merely as personal investments by individual citizens not engaged in the banking or investment business, for capital represented by this class of investments is not employed in substantial competition with the business of national banks. Thus in legal contemplation and practical effect the restriction was the same before re-enactment as after.”

Taking this declaration to be the carefully considered judgment of the Court, we omitted to bring to the Court's attention the matters which we now briefly state.

The principal point of this petition is that the debates both in the House and Senate preceding the adoption of the amendment quite conclusively show that it was the Congressional

intent to declare that investments of individuals, other than private bankers, in bonds, notes and other credits should not be deemed moneyed capital within the meaning of that Section; and to declare that shares of national banks might be taxed by the states at a rate not higher than that imposed upon state banks or private bankers. And this, the speakers said, had always been the true meaning of Sec. 5219.

The discussion revolved around the decision of this Court in *Merchants National Bank vs. Richmond*, 256 U. S. 635. It was said that, if the decision in that case should be followed to the point of holding that bank shares might not be assessed at a higher rate than bonds and mortgages held by individuals for investment purposes, assessments against bank shares in numerous states, variously said to be between 18 and 27 states, would be invalid. The purpose of amending Sec. 5219, it was said, was to permit these states to continue their classified system of taxing money and credits and mortgages, and to continue their income tax laws, and to permit validation of taxes assessed against shares of national banks so long as those taxes were not at a higher rate than taxes upon state banks and private bankers. It was repeatedly said that before the *Richmond Bank* decision Sec. 5219 operated to prevent the taxation of shares at a higher rate than that imposed upon state banks and private bankers. Much of the discussion was devoted to the provision which, in one form or another in the different bills, sought to give the states power to validate taxes previously assessed or paid in the various states which were affected. There was difference of opinion between the House and Senate as to the form of the amendment, particularly as to the validating clause. And this difference of opinion grew out of the assertion that in New York and Massachusetts, private bankers, such as J. P. Morgan & Co., Kuhn, Loeb & Co., Lee Higginson & Co., Kidder Pea-

body & Co., were taxed at a lower rate than shareholders in national banks, and many were unwilling that taxes on bank shares should be validated unless those bankers were assessed on their capital at a rate equal to shares of national banks.

Cong. Rec., Senate Vol. 64, pp. 845, 850, 1454-1464, 2173-2175, 2218-2224; House Vol. 62, pp. 8720-8739; Vol. 64, pp. 1539-1546, 1659, 1660, 1841, 1842, 4780-4803.

The part of the amendment here pertinent as it stood in the Senate bill read as follows:

“In the case of a state tax on said shares, the rate of taxation shall not be higher than the rate applicable to other moneyed capital employed in the business of banking.” (C. R. Vol. 64, p. 2172.)

It passed the Senate reading:

“In the case of a tax imposed by a state or any agency thereof on said shares, the rate of taxation shall not be higher than the rate applicable to other moneyed capital employed in the business of banking within the taxing state; Provided, that whenever by any taxing district the shares in mercantile, manufacturing, or business corporations doing business therein are taxed the rate applied by said taxing district to the shares in banking associations shall not exceed the average of the rates applied by it to the shares of such other corporations or to the shares of such of them as are taxed therein.” (C. R. Vol. 64, p. 4959.)

The House bill which was under consideration was, as to the pertinent part, in the following language:

“That the tax imposed shall not be at a greater rate than that assessed on other moneyed capital in the hands of individual citizens of such state coming into competition with business of national banks.” (C. R. Vol. 62, p. 8720.)

The bills passed the House and Senate in the respective forms above stated. Conference committees were named but came to no formal agreement. Upon receipt of the report of the conference committee of the House, that body voted against concurring in the bill passed by the Senate, and there-upon an amendment was offered which apparently was the work of the conference committees and had been agreed upon as a compromise measure for adoption, in the event of the failure of the House to accept the Senate bill. This amendment was adopted in both house and Senate and became the law now under consideration. It was and is in the following form:

“In the case of a tax on said shares, the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks; PROVIDED, That bonds, notes or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business, and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.”

Both in the House and Senate there was explanation of the purpose and meaning of the compromise amendment, particularly in respect of its variation from the original House and Senate proposals. In the House the principal statement was made by Mr. Wingo. He had served on the House Committee on Banks and Banking, and had taken an active part in the hearings before that Committee. He had taken a leading part in the debates on the floor of the house. And he was a member of the House conference committee. In the Senate the explanation was made by Senator Kellogg. Senator Kel-

logg had framed the Senate bill and was very active in procuring its passage. In both House and Senate the amendment was adopted immediately following these explanations and it cannot fairly be doubted that the statements made by Mr. Wingo and Senator Kellogg express the meaning of the amendment as it was in the minds of both House and Senate members at the time they made a law of it. It may be added that the views expressed in these explanations fairly reflect what was said by these same men and many others during the consideration of the original bills in both House and Senate. Mr. Wingo said, in part:

“However, we all agree that in view of the uncertainty and the difference of opinion that has been created by this Richmond decision, it is wise to restate the law, but the House conferees feel that in our effort to remove the uncertainties thus created, we should not add other uncertainties and make the confusion worse confounded, which the Senate provision does. We take the position that it is easy to override the contention of the Richmond case by restating the old rule with such additional language as will show that it is the intention of Congress in the new statute to follow the rule laid down in the old line of decisions which were clearly understood and constituted a settled basis upon which the state taxing power could depend with some degree of certainty. In order to do this the House committee has added the two provisions which I last read, to the old settled rule. But you may ask, ‘Will not these two new provisions create uncertainty until they are given judicial determination by the Courts?’ We answer ‘No’ because we get the language of these two provisions from the language used by the courts in many decisions. Thus it will be seen that the House provision as insisted upon by the House conferees clearly overrules the Richmond decision and goes back to the old rule which the states followed for 53 years.

"Under the contention in the Richmond case, the tax of every state in the Union on national-bank stocks was in danger, if such state provided a lower rate on any intangible property, or if, for illustration, any state exempted farm mortgages from taxation. Such exemption of farm mortgages has been held by the old line of decisions as not violating the rule laid down in 5219, and by the proviso which the House conferees have put on subdivision (b) we make it clear that moneyed capital invested in farm mortgages, and which is exempt from taxation in many of the states, shall not be deemed moneyed capital within the meaning of the law.

"The position of the House conferees in this whole controversy has been to overcome the contention of the Richmond case by restating the law in clear, unequivocal language, yet using the old settled rule. We have at all times sought to give to the states an unlimited permission to exercise their taxing power on capital invested in national banks with one restriction only, and that is the simple, honest limitation that in the exercise of that taxing power the states shall not destroy the national banks by discriminating in favor of the capital of private bankers that compete with the national and state banks. The position of the House Conferees is: Let any state tax banking capital to any extent it wishes, just so it makes the burden equal on all banking capital." (C. R. Vol. 64, pp. 4802, 4803.)

Mr. Kellogg said, in part:

"That is the House provision. My object in introducing the original bill, which said that the rate should not be higher than that [on] all other moneyed capital engaged in banking, was to get away from the provisions of state laws that made the basis of taxing national banks the individual credits in the hands of the citizen. The House has attempted to get by that by providing that these investments in the hands of individuals shall not be deemed moneyed capital engaged in banking. I think

myself it is rather a cumbersome provision; but we cannot get anything else, and I think it is better to accept it than to get no law at all." (C. R. Vol. 64, p. 4959.)

We recognize that ordinarily the meaning of an act of Congress is to be ascertained from the language of the act itself. But plainly where the meaning of words or phrases used is not free from doubt, the Congressional Record may be examined for such help as it may give. If controlling effect is to be given to the words "and representing merely personal investments not made in competition with such business," the whole proviso is nullified. The amendment, so interpreted, means nothing more than is fully expressed in the declaration "the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks." The careful reference to specified classes of capital, to-wit: "bonds, notes or other evidences of indebtedness" in the hands of individual citizens, its reference to capital, or to individuals "not employed or engaged in the banking or investment business," and the reference to "personal investments," are denied any meaning or significance whatever. Whereas it seems to us that the proviso was intended to control and limit the language which it followed. We submit that the debates demonstrate this. Furthermore, if we read the act in the light of its stated meaning as expressed in the debates and give to it a meaning which the language used is susceptible of, and which in common, if not grammatically correct, usage it fairly expresses, the clause "and representing merely personal investments not made in competition" etc., will be given the effect which in free speech it frequently has; that is "and representing" will mean "which represent." It will read:

PROVIDED, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business, which represent merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

We submit that it is much more reasonable to say that Congress intended to declare that personal investments made outside the banking or investment business were not to be considered competing moneyed capital, than to say that it intended to declare that "personal investments not made in competition with such business" shall not be deemed moneyed capital "coming into competition with the business of national banks.

We submit that the debates and explanations above referred to justify the opinion in *First National Bank vs. Guthrie* Center in its declaration that the amendment merely amounted to restatement of the law as previously in force, but that then and now investments in bonds, notes and evidences of indebtedness were not to be deemed competitive with the business of national banks unless held or employed in the banking or investment business. And we may add that the term "investment business" if we are to accept the explanation of Messrs. Wingo and Kellogg and others is confined to that business as conducted by private bankers.

It is true, of course, that some of the statements of the Court in *Mercantile National Bank vs. Mayor of New York*, 121 U. S. 138, quoted in the opinion in this case, are against the theory that prior to 1923 personal investments were not under any circumstances to be deemed competing moneyed capital; but we point out that the decision in that case was that investments of insurance companies, in an amount in excess of the aggregate holdings of bonds and notes of all in-

dividuals and corporations in Minnesota, did not represent capital coming in competition with national banks. And it seems to us also that the Court in that case could not have thought of substantial competition in the sense of its being substantial if the aggregate of investments were great, or it would not have held that the competition between savings banks and national banks insubstantial, where it was shown that their deposits, assets available for investment purposes, were greatly in excess of the moneyed capital of all kinds held by all persons and corporations in Minnesota.

We have referred only to bonds, notes and the like held by persons not engaged in the banking or investment business. In our brief, and on the argument, we endeavored to point out that the evidence did not require or justify a finding that any substantial amount of capital was employed in any business of dealing in bonds, notes or other evidences of indebtedness. It is our thought that if the Court is lead by what we have said to doubt the correctness of the conclusion, that personal investments held in a large aggregate constitute competing moneyed capital within the meaning of Sec. 5219, it may be inclined to reconsider whether the showing in this respect requires an adherence to the decision filed. There were but two corporations located in Ramsey County which might be considered in the "investment business." One was the Investment Service Co., with authorized capital of \$50,000. It was in the business of aiding persons in making investments. (R. 80.) The other was the Provident Loan Association, with authorized capital of \$50,000. This was essentially a charitable institution. (R. 173, 174.) The Court inadvertently said in its opinion that two such corporations in Ramsey County had a capital aggregating \$2,250,000. There were two corporations in Hennepin County, one having authorized capital of \$1,200,000, (19) and the other having authorized capital

of \$250,000. (190, 191.) But we submit that when we go outside the taxing district in which the bank is located, the competitive capital will only be considered substantial when the amount is great comparing it with bank shares, or bank resources, and with other capital held over the whole state, and that, so considered, the inadvertent failure adequately to tax two corporations with capital aggregating \$1,450,000, since it could not even minutely affect the tax rate of the state, should not be considered so substantial as to require the exemption from taxation of the shareholders of 340 (1921) or 343 (1922) national banks. (Ex. M. 363, 364.)

And if consideration be confined to capital embarked in a business of dealing in investments, the facts stated in the opinion as tending to establish the existence of a substantial amount of moneyed capital will be almost wholly lacking in significance, because it may not be assumed that purchases of bonds and other investments in large amounts indicates the employment of substantial capital in the business of selling bonds and investments, further than as indicated, because when the facts are shown we anticipate it will be made to appear that, excepting the two Minneapolis corporations above referred to, this business was principally conducted in the state by persons and corporations located outside the State who employ no appreciable amount of capital in their business within the state.

We add a single practical consideration, which in our judgment might be forceful in suggesting a re-examination of the basis of the decision which has been rendered. Beyond doubt the underlying object and purpose of Sec. 5219 was to prevent discrimination against and injury to national banks. If in the operation of the money and credits tax law or the mortgage registry tax law, Minnesota national banks have been subjected to discrimination or threatened with injury, the

banks and their shareholders must have been conscious of it. If they are not aware of it, then the discrimination may not be said in any real or practical sense to be substantial. Of weight here is a fact of common knowledge in Minnesota that in 1925 there was under consideration in the State Legislature, a bill to increase the tax rate on money and credits from three to four mills, and it was stated in the newspapers that delegations representing the banking organizations of the state opposed the increase on the ground that it would tend to injure the banks by causing the withdrawal of deposits and might drive capital from the state. But more convincing and far more weighty is the fact that national banks throughout the state have continued to pay taxes assessed against them on the same basis as that involved in this proceeding. The respondent here, one other St. Paul bank and, as far as we can learn, four small banks, two of which were about to liquidate, elsewhere in the state resisted payment. The Supreme Court of Minnesota upheld the Bank's contention, filing its decision in 1925. Yet the banks, except as stated, continued to pay. When the decision of this Court in this case was announced, the Minnesota Legislature was in session and it began consideration of the measures to be taken to bring the laws of the state into conformity with Sec. 5219 as here interpreted. The officers of the national banks (other than the respondent) over the state, hurriedly met and petitioned the legislature to withhold action until its next session, pledging that during the intervening two years taxes assessed as heretofore would be paid without protest. And the banks in the short time they had for action, in number approximately 90 per cent of all in the State, have promised to pay such taxes and have given assurance that stockholders' meetings will be called promptly to ratify these pledges of their officers. We believe that these banks have so paid their

taxes and have so pledged continued payment during the next two years because they think that the money and credits tax law and the mortgage registry tax law are not harmful or hostile to national banks, and that, on the contrary, these tax laws and those taxing shares of national banks constitute a practical, fair and workable system of taxing moneyed capital and shares and that any change in the existing system will operate to the disadvantage of the banks.

REAL ESTATE MORTGAGES AS COMPETING CAPITAL

We thought that the opinion in *First National Bank of Guthrie Centre vs. Anderson* implied that if there were proof that mortgages which were alleged to be in competition with the business of national banks were negotiated through banks they would not come within the terms of Sec. 5219. Since the evidence here, so far as the subject was inquired into, showed this banking participation in the making of mortgages, we offered no discussion on the subject of whether the amendment to the Federal Reserve Act of 1913, permitting national banks to a limited extent to invest in mortgages, operated to bring mortgage investments within the operation of Sec. 5219.

We now call attention to the specific statement in Mr. Wingo's explanation of the amendment to the effect that its purpose was to declare that mortgages were not to be deemed moneyed capital coming into competition with national banks. We add that everything which we have said concerning personal investments is applicable to mortgages.

There are some observations which seem to us forceful which might have been made against the theory that Congress in permitting national banks to invest in mortgages intended

also to amend, in effect, Section 5219 so as to forbid the taxation of bank shares at a higher rate than that imposed on mortgages.

In 1913, Minnesota had its mortgage registry tax law, and we believe that many other states had substantially similar laws. The Minnesota Act imposes a registry tax, and specifically exempts the mortgage and the debt secured thereby from all further taxation. The tax is on "the security" and not on the mortgage or the debt. (*Mut. Ben. Ins. Co. vs. Martin*, 104 Minn. 179, 182.) There could be no tax on bank shares comparable with the mortgage registry tax. And since the state had expressly provided that upon payment of the registry tax the mortgage and the debt should thereafter be free from all taxes, and since mortgages usually run for three to five years, and frequently run for ten to twenty year periods, immediately on the passage of the amendment to the Federal Reserve Bank Act the Minnesota laws taxing bank shares were wholly invalidated, and, if the theory be pressed to its extremity, no taxes could be assessed on bank shares for some period varying from three to twenty years thereafter. And this same condition, we believe, existed in many states. It is not easy to attribute any such intent to the amendment.

It is more logical, we believe, to suppose that Congress was aware of the decisions of this Court holding that mortgages might be exempted from taxation without exempting bank shares. (*Hepburn vs. School Directors*, 90 U. S. 480; *Adams vs. Mayor of Nashville*, 95 U. S. 19; *First Nat. Bank of Aberdeen vs. Chehalis County*, 169 U. S. 440, 460.) This Court had not in any of those decisions declared that mortgages were not to be regarded as competing moneyed capital because national banks were forbidden to loan money on real estate security. The decisions rested solely on the consideration that

the exemption of mortgages from taxation did not evince a policy discriminating against national banks, and were not investments of the character which must be taxed at as high a rate as bank shares.

It is far more likely that Congress was in 1913 initiating the policy, which in 1916 it elaborately carried into effect, of making capital available for mortgage loans, particularly for farm loans, at the cheapest possible rate. In the Federal Land Bank Act, the Joint Stock Land Bank Act, and the allied enactments, (U. S. C., Title 12, Sec. 641—1021) Congress undertook to throw almost unlimited amounts of capital into this field, and to a large degree it sought the aid of private capital by permitting private acquisition of shares in these institutions. It seems to us that Congress could not have intended that no state should aid in such a policy by exempting mortgages from taxation unless it also exempted shares of national banks from taxation.

Respectfully submitted,

CLIFFORD L. HILTON,
Attorney General.

G. A. YOUNGQUIST,
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Attorneys for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF MINNESOTA,

Petitioner.

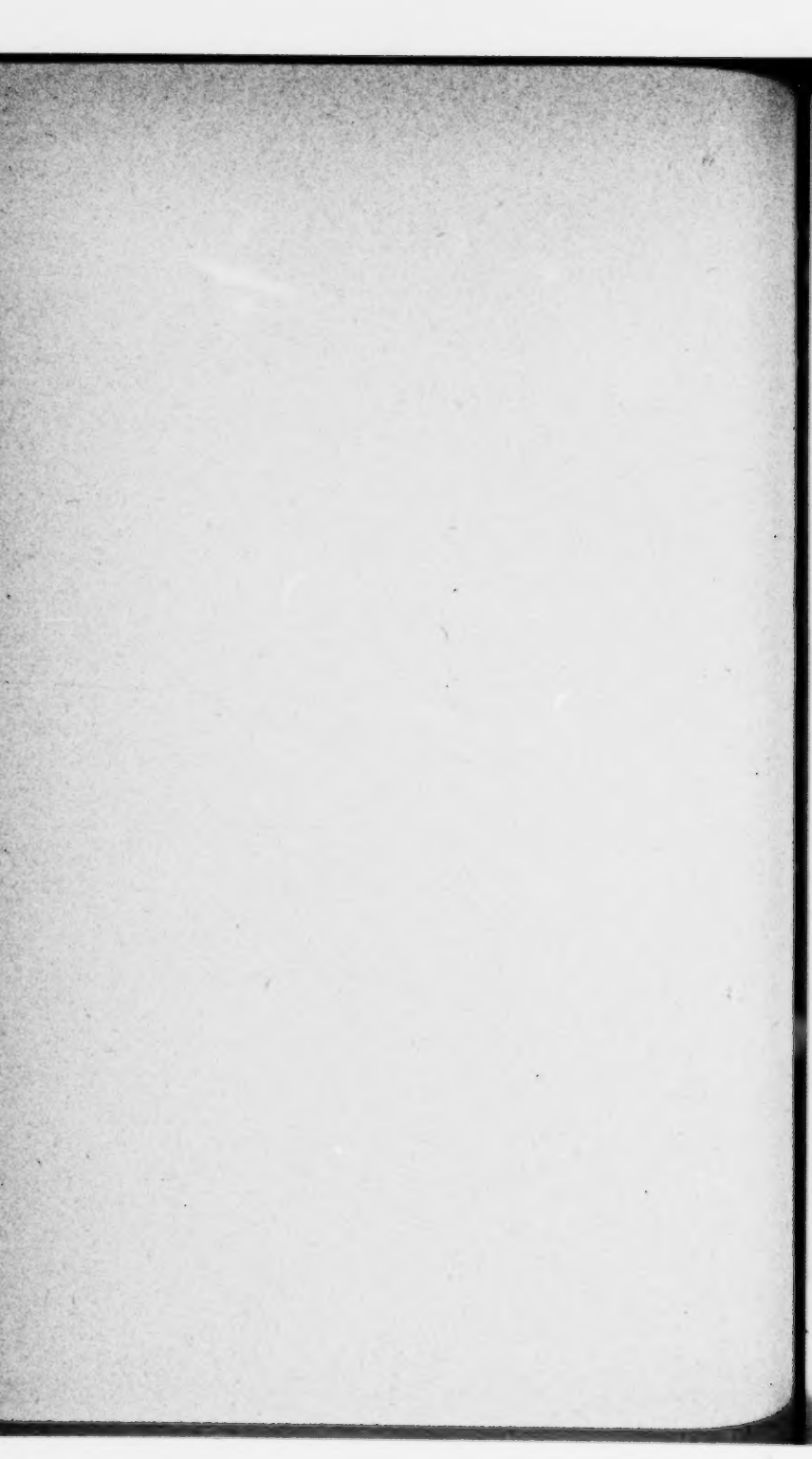
vs.

THE FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

BRIEF FOR RESPONDENT IN RESISTANCE TO
PETITION FOR WRIT OF CERTIORARI

THOMAS D. O'BRIEN,
ALEXANDER E. HORN,
EDWARD S. STRINGER,
Counsel for Respondent,
St. Paul, Minnesota.



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IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF MINNESOTA,

Petitioner.

VS.

THE FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

BRIEF FOR RESPONDENT IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI

STATEMENT.

The Supreme Court of Minnesota determined as a fact that moneyed capital to a material and substantial amount in the hands of individual citizens of Minnesota came into competition with shares of national banks and that the statutes of Minnesota imposing a higher tax upon such bank shares than that imposed upon such moneyed capital was repugnant to Section 5219, U. S. Rev. St. It therefore denounced its own law.

It is this finding of fact, of competition, which the State desires this Court to Review.

The State sought judgments against the Bank for the personal property tax assessed against the shareholders for the years 1921-1922. When originally submitted to the trial court, findings favorable to the State were made, and judgment ordered in its favor. A new trial was directed by the Supreme Court (*State vs. First National Bank*, 204 N. W. 874.) The actions were then re-submitted upon the original record, when findings were made in accordance with the conclusions of the Supreme Court and judgment was denied the State.

The answers interposed by the Bank attacked the laws of Minnesota in several particulars, but upon this petition there is for consideration only those providing respectively for the taxation of money and credits and of shares of national banks.

(A) MONEY AND CREDITS.

Money and Credits were defined by Section 798 Revised Laws, 1905, Section 1975 General Statutes 1913, as follows:

“1. ‘Money’ or ‘moneys’ shall mean gold and silver coin, treasury notes, bank notes and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.

“2. ‘Credits’ shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.”

Section 2316, General Statutes 1913, provided:

“Definition—Tax Rate—‘Money’ and ‘Credits’ as

the same are defined in Section 798 Revised Laws of 1905, (1975,) are hereby exempted from taxation other than that imposed by this act, and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks situated in this state, nor to any indebtedness on which tax is paid under Chapter 328, General Laws 1907, (2301-2309.)”

Chapter 328 excepted as above is the law providing for the taxation of real estate mortgages by a registry tax.

(B) NATIONAL BANK SHARES.

National bank shares were taxed under the provisions of Chapter 416 Laws 1921, the first Section of which was:

“Section 1. Assessment of Bank Stock—The shares of stock of every bank in this state organized under the laws of the United States and the moneyed capital of every bank or mortgage loan company organized under the laws of this state, shall be assessed and taxed at forty (40) per cent. of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located.”

Construing and applying these statutes, the Supreme Court said:

“(4) In the year 1921 the shares of stock in defendant bank were taxed at the rate of 67 mills on the dollar on forty per centum of their value, equivalent to 26.8 mills on their full value. In the year 1922, they were taxed at the rate of 61.5 mills on forty per cen-

tum of their value, equivalent to 24.6 mills on their full value. Money and credits were taxed in those years at 3 mills on the dollar of their value. The rate of taxation upon the shares of the bank was several times the rate of taxation upon moneyed capital in the hands of individuals, and was clearly a discrimination forbidden by the Federal Statute unless we can say that it does not appear that any substantial part of such moneyed capital was used in competition with national banks."

The aggregate of the money and credits taxed in Minnesota at the 3 mill rate was:

<i>Year</i>	<i>Entire State.</i>	<i>Ramsey County Only.</i>
1921	\$425,745,839	\$83,965,839
1922	400,688,948	83,796,840

The aggregate value of national bank shares after deducting real estate was:

<i>Year</i>	<i>Entire State.</i>	<i>Ramsey County Only.</i>
1921	\$60,728,000	\$11,133,000
1922	62,601,000	11,816,660

After fully considering the testimony as to the character and use of this moneyed capital, the Supreme Court found as a matter of fact:

"The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks, within the meaning of Section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the state to enforce."

State vs. First National Bank, 204 N. W., 874-880.
(Record, p. 307.)

Upon the re-submission of the case, the Trial Court, following this conclusion, found:

“That at the time of the assessment of said taxes for the year 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county coming into competition with the business of national banks in said county and with the business of said defendant.” (Record, p. 333.)

ARGUMENT.

I.

CERTIORARI WILL NOT BE GRANTED WHEN THE ONLY QUESTION TO BE REVIEWED IS ONE OF FACT.

The findings which this Court is now asked to review are findings of fact and, therefore, the writ asked for will not be granted.

Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508.

Upon the trial of these actions, the defendant Bank assumed the burden not only of showing the existence of moneyed capital in the hands of individual citizens and taxed at a lower rate than bank shares, but that such moneyed capital was used and came into competition with national banks.

The petitioner, by a labored effort, seeks to show that only the existence of such capital was shown and that the Supreme Court of Minnesota *assumed* competition from the fact of the existence of moneyed capital of a character which might have brought it into competition.

A reading of the entire opinion delivered by the Court shows that no such restricted meaning can be given it.

We will not follow counsel in a discussion as to the sufficiency of the evidence. This court will not grant a writ bringing up for review only a claim of insufficient evidence. We will content ourselves with showing there was testimony introduced and considered upon both questions, that is—the character of the use of the moneyed capital as shown by the securities invested in by individuals, and second—that such use brought the moneyed capital into competition with national banks.

There was no dispute as to the amount of money and credits returned for taxation in the State, 425 million, and Ramsey County alone, 83 million. These totals included fifteen items, some of which apparently did not come within the class of investments which could be considered as moneyed capital in competition with national banks and we, therefore, segregated the items, showing enormous sums invested by individual citizens in securities of the character which this Court has said normally enter into the business of banking.

We further showed the extent and character of the operation of investment companies, the holdings of stock in those companies by individual citizens of the state, the amount of commercial paper bought and sold by brokers and others in the state, the amount annually loaned upon real estate security, and a careful estimate of the amount so loaned by individuals. There was a great deal of evidence introduced upon these and kindred subjects upon all of which the witnesses were carefully and exhaustively cross-examined.

Having thus shown, without dispute, the existence of moneyed capital in the hands of individuals and invested in securities of the class which normally enter into the business of banking and which, at least, it must be admitted *may* be in competition with national banks, we introduced several witnesses who testified to actual and direct competition between this moneyed capital and that represented by the shares of national banks. The testimony, as to actual competition, was much stronger and much more in detail in the present than that produced in *Merchants National Bank vs. Richmond*, 256 U. S. 635. There only one witness, Mr. M. C. Adams, testified, and very briefly, as to competition, while here several witnesses testified, were cross-examined and the attention of the Trial and Supreme

Courts especially directed to the importance of the subject.

The petitioner sought to overcome this evidence by the testimony of one witness who expressed an opinion on the subject but even he admitted competition to some extent.

It was with reference to this testimony that the Supreme Court of Minnesota said, (Record p. 322):

“Several witnesses called by defendant testified that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. The only witness called by plaintiff testified briefly that in his opinion there would be some competition in some of the items among which he included book accounts, but that there would be little or no competition in other items as they did not represent a class of loans or credits in which the banks were dealing.

The undisputed and unquestioned facts shown by the Record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of Section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce.”

This was an independent finding of the fact of competition and in no way qualified by the previous language of the opinion.

The Minnesota Court, we submit, had previously clearly and correctly interpreted and followed the decision of this

Court in the Richmond case, but, if the language quoted on page 5 of the petition can be said to indicate an erroneous view of that case, it is a sufficient answer to say that the Court did not stop there; it did not rest its decision on the proposition that this Court had held that competition is shown by the character of the investments in themselves but upon the contrary it examined the evidence and found competition as an established fact.

It thus appears that before reaching this conclusion the Supreme Court analyzed not only the character of the securities but their use, the testimony of the various witnesses with reference thereto, and whether or not the particular use of the moneyed capital brought it into competition with national banks, and said that "the undisputed and unquestioned facts shown by the Record convince us" of the existence of the moneyed capital and of its use in competition with national banks. All of this discussion would have been entirely useless if the Court had determined competition from the character of the investments, per se.

It is not necessary to discuss whether competition would be sufficiently shown, by establishing the existence of moneyed capital, invested in securities which normally enter into the business of banking. We feel it probably would, since this court has very carefully segregated the class of investments which may be held to be in competition with national banks, excluding those in railroads, insurance and manufacturing companies, but including personal investments in interest-bearing securities, whether for long or short periods, and also stock in corporations the business of which consists of investments in such securities, thus showing it is the use made of moneyed capital which determines the question of competition.

Mercantile National Bank vs. New York, 121 U. S. 138.

But the respondent did not limit its evidence so as to make such claim necessary. Upon the contrary, as already said, witnesses were called to show actual competition, at least some evidence was introduced by the petitioner in an attempt to overthrow such evidence, so that it was after a full discussion of practical business operations, and after a full consideration of the evidence, that the Supreme Court of Minnesota set aside as unjustified the original finding of no competition, and instead thereof, found actual competition as we have above quoted.

Upon the re-submission of the case, the District Court of Ramsey County found:

“That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county *coming into competition with the business of national banks in said county and with the business of said defendant.*” (Record, p. 333.) (Our Italics.)

Competition between the banks and other moneyed capital was thus found from the testimony as an established and independent fact, the securities so invested in by the individual citizens, owners of this moneyed capital, were “such as normally enter into the business of banking.” (Merchants National Bank vs. Richmond, *supra*) and the amounts so invested constituted moneyed capital in the hands of individual citizens of the State which the Court found was used and came into competition with the business of national banks, and were taxed at a rate much lower than that imposed upon national bank shares. This was a complete defense to the tax sought to be imposed and the

Record affords no justification for the claim, advanced in the brief for petitioner, that the finding of competition was "based wholly upon its" (the Supreme Court's) "theory that the decisions of this Court hold that they" (such securities) "are under all circumstances competitive."

We emphasize the Richmond case because the facts upon which this Court based its conclusions in that case, harmonize so fully with those found here, but in truth the opinion in the Richmond case announced no new view of the scope and purpose of the Federal Statute. It was there said, (p. 639):

"By repeated decisions of this court dealing with the restriction here imposed, it has become established that while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock of corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking."

Following this statement, this court reviewed its prior decisions and quoted from the language found in the leading case of *Mercantile National Bank vs. New York*, 121 U. S. 138, as follows:

"The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount or otherwise, which are from time to time, according to the rules of the business, reduced again to money

and reinvested. *It includes money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment.*"

II.

THE COMPARISONS MADE BETWEEN THE TAX UPON MONEY AND CREDITS AND UPON THE SHARES OF NATIONAL BANKS HAVE NO BEARING IN THIS CASE.

The claim that the tax laws of Minnesota resulted in no discrimination in fact was disposed of by the Supreme Court of Minnesota as follows (Record, p. 316):

"5. Plaintiff also insists that the tax on national bank shares is no greater in fact than the tax on credits. The argument advanced in support of this claim is that individuals are taxed at the rate of three mills on the dollar upon the full value of their credits without deducting their liabilities; and that if banks were taxed at the same rate upon their resources without deducting their liabilities, the amount of the tax will be approximately the same as under the present law. Probably true. But the tax is not against the bank but against the shareholders as individuals. They are taxed as individuals upon the full value of the item of property represented by their shares. They are allowed no deduction from such full value on account of their liabilities. In this particular, the statute applies the same rule to them that it applies to those taxed under

the money and credits' act. See *Des Moines National Bank vs. Fairweather*, 263 U. S. 103, 22 S. Ct. 23, 68 L. Ed. 191."

The above statement is so plain and comprehensive that we ask permission to make no further comment upon this phase of the argument of petitioner.

III.

THE FACTS SO FOUND BROUGHT THESE ACTIONS SQUARELY WITHIN THE DECISIONS OF THIS COURT.

In *Merchants National Bank vs. Richmond*, supra, the rate on National bank shares was \$1.75 per \$100 and "upon intangible personal property in general, including bonds, notes, and other evidences of indebtedness," 95 cents per \$100. In the City of Richmond a tax at the higher rate was imposed on national bank shares of the value of more than \$8,000,000, while the lower rate was imposed on "bonds, notes, and other evidences of indebtedness," of the value of \$6,250,000.

In Ramsey County, Minnesota, the full value of national bank shares in 1921 was \$11,133,000, 40% of which was taxed at the rate of 67 mills on the dollar, resulting in a rate of 26.8 mills on full value, while money and credits amounted to \$83,965,839, and were taxed at 3 mills.

In the Richmond case this court, after reciting the respective amounts of property taxed at the different rates, said, (p. 638):

"It is to be inferred that a substantial part of this aggregate was in the hands of individual taxpayers. The precise amount does not appear. It was also

shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes, and other evidences of indebtedness, comes into competition with the national banks in the loan market."

And again, p. 641:

"In the present case, there is a clear showing of such competition, relatively material in amount, and it follows that, upon the undisputed facts, the ordinance and statute under which the stock of plaintiff in error was assessed, as construed and applied, exceeded the limitation prescribed by Section 5219 Rev. Stats., and hence that the tax is invalid."

IV.

THE TAXES SO LEVIED IN VIOLATION OF SECTION 5219 WERE NOT VALIDATED BY CHAPTER 110, LAWS OF MINNESOTA FOR 1923, APPROVED MARCH 29, 1923.

Chapter 110 Laws of Minnesota, 1923, apparently attempts to validate the tax assessments involved in this proceeding. The concluding portion of the enactment is:

"And all taxes heretofore paid, levied or assessed under the laws of this state upon shares of national banking associations, or which might or could have been paid, levied or assessed under the provisions of said Section 5219, *as now amended*, are hereby legalized, ratified and confirmed."

(Italics ours.)

It was claimed in the State court that this enactment was authorized by the 1923 amendment to the Federal law,

and that even if the assessment were originally void it may be validated by giving both the Federal and the State statutes retroactive effect. The Supreme Court considered this claim, and disposed of it in accordance with the decision of the Federal District Court in

Minnehaha National Bank vs. Anderson, 2 Fed. (2nd,) 897, (Record p. 324.)

It is quite apparent that the amendment of March 4, 1923, of Section 5219, was not intended to authorize nor consent to the back taxing of shares in national banks except in accordance with the provisions of Section 5219 as previously existing. The following is the language used:

“The provisions of Section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying or confirming by the states of any tax heretofore paid, levied or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said Section.”

As stated by petitioner, there were at the time of the enactment of this amendment discussions in several of the states as to the validity of the laws taxing national bank shares, and it is obvious that inasmuch as Congress was considering an amendment which might affect the tax laws of the states, or some of them, it would have been unwise to legislate upon the subject without protecting the assessments in those states in which the laws complied with Section 5219 as it previously existed.

Nor would it have been wise to prevent states in which illegal assessments had been made from back taxing within proper limitations to the extent that Section 5219, as previously existing, undoubtedly authorized.

This is the plain and obvious meaning of the language, and so construed the amendment had no retroactive effect but only preserved the status quo.

It is well settled that no retroactive effect will be given a legislative enactment unless the language used imperatively requires that construction.

Reynolds vs. McArthur, 2 Peters, 417-438.

Sohn vs. Waterson, 17 Wall., 596-598.

U. S. vs. Burr, 159 U. S. 78.

U. S. vs. American Sugar Refining Co., 202 U. S. 563.

Parkinson vs. Brandenburg, 35 Minn. 294.

Oppegaard vs. County of Renville, 110 Minn. 300, 30 Cyc. 1205.

Even if this were not true, Chapter 110, Laws of Minnesota, 1923, would be ineffective, as it amounted to no assessment or levy of a back tax but only an attempted ratification of a void assessment insofar as the same would be valid under Section 5219, *as now amended*.

The pertinent language of the amendment was:

“Provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this Section.”

(Italics ours.)

The finding of the Minnesota Court is that moneyed capital of a material amount, *was* used in competition with national banks. It seems, therefore, that even under the amendment the moneyed capital so found to exist would

render invalid the tax attempted to be assessed upon shares of national banks.

V.

NO PUBLIC INTEREST REQUIRES A REVIEW OF THESE ACTIONS.

The precise questions involved here are of limited importance even in Minnesota, as the only national banks in the state which failed to pay the tax for 1921 and 1922, were, the petition states, the respondent and two other "small banks," (petition p. 1). The taxes so paid cannot be recovered back, (petition p. 7).

As to taxes assessed for subsequent years, the decision here will not be controlling since both the act of Congress and the statutes of Minnesota have been amended.

1924 Sup. Fed. St. Ann. p. 84,
Ch. 102 Laws of Minn., 1923,
Ch. 304, Laws of Minn., 1925,

Necessarily each case must depend upon the particular statute involved and the exact facts established.

General statements as to the public interest will not be considered.

Furness Withy & Co. vs. Yang-tsze Association, 242
U. S. 430,

*Southern Power Co. vs. North Carolina Public Service
Co.*, 263 U. S. 508,

Layne & Bowler Corporation vs. Western Well Works,
261 U. S. 387,

Nor is there any substantial diversity in the decisions of the State courts.

We believe the decision of this Court in the Richmond case has been followed in every state where the taxing statute similar to the one in Minnesota existed, and where the proof established the existence of a substantial amount of competing moneyed capital.

State Bank of Omaha vs. Endres, 109 Neb. 753, 192 N. W. 322.

Central National Bank vs. Sutherland (Neb.) 202 N. W. 428.

Eddy vs. First National Bank, 275 Fed. 550.

Minnehaha National Bank vs. Anderson, 2 Fed. (2nd Ed.) 897.

State ex rel vs. Wallace, 49 N. D. 103, 187 N. W. 728.

The petition gives three cases which, the petitioner claims, are at variance with the rulings of the Minnesota Supreme Court. Those cases are:

First National Bank of Guthrie Center vs. Anderson, 192 N. W. (Iowa) 6,

First National Bank vs. City of Hartford, 203 N. W. (Wis.) 721.

McFarland vs. Georgetown National Bank, 270 S. W. (Ky.) 995.

In each, the conclusions are based either on different taxing statutes or different facts.

The Iowa case, (*First National Bank vs. Anderson*), the court held that money invested by banks, *as agents for their own customers*, and for the convenience of its customers or for its own profit, was not competing money. In other words, a bank could not compete with itself.

As to the Wisconsin decision, (*First National Bank vs.*

City of Hartford,) the Supreme Court of Minnesota said, (Record p. 318):

“The Wisconsin law differs so radically from the Minnesota law that the questions there presented for solution were not the same as those presented here.”

In Kentucky, (McFarland vs. Georgetown National Bank) the taxing statute was different and the bank failed to establish the existence of a substantial amount of competing money.

While it is true that a retroactive effect was given to the act of Congress by the Courts of Wisconsin and Kentucky, that question is a minor one, and does not appear to be relied upon by petitioner.

There is, we submit, no conflict between the decision of the Minnesota Supreme Court and the decisions of the highest courts of other states. But even if such conflict existed, it would not be ground for the writ.

Layne & Bowler Corporation vs. Western Well Works,
supra.

It is, therefore, apparent that the decision of the Supreme Court of Minnesota is not of such general or public importance as would justify the granting of the Writ of Certiorari.

VI.

THIS PETITION IS EQUIVALENT TO AN APPLICATION FOR A RE-ARGUMENT OF THE RICHMOND CASE.

It is impossible to distinguish this from the Richmond case and since the Minnesota Court followed the decision

of this Court, the present application is equivalent to asking for a reconsideration of the Richmond case.

Had the doctrine there announced been new or at variance with the prior decisions of this Court, such a request might, in view of the experience and commanding ability of counsel for petitioner, be considered reasonable, but that decision is in complete harmony with the prior holdings of this Court extending back for a period of more than half a century.

We have then a case in which the State Court following and applying the decisions of the Federal Supreme Court found the law and practice of its own State to be in violation of the National Statute and beyond the rightful power of the State. It seems, therefore, the Record presents no Federal question. The petition should be denied.

Respectfully submitted,

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EDWARD S. STRINGER,

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St. Paul, Minnesota.

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Office Supreme Court, U.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 245

STATE OF MINNESOTA,

Petitioner,

—VS—

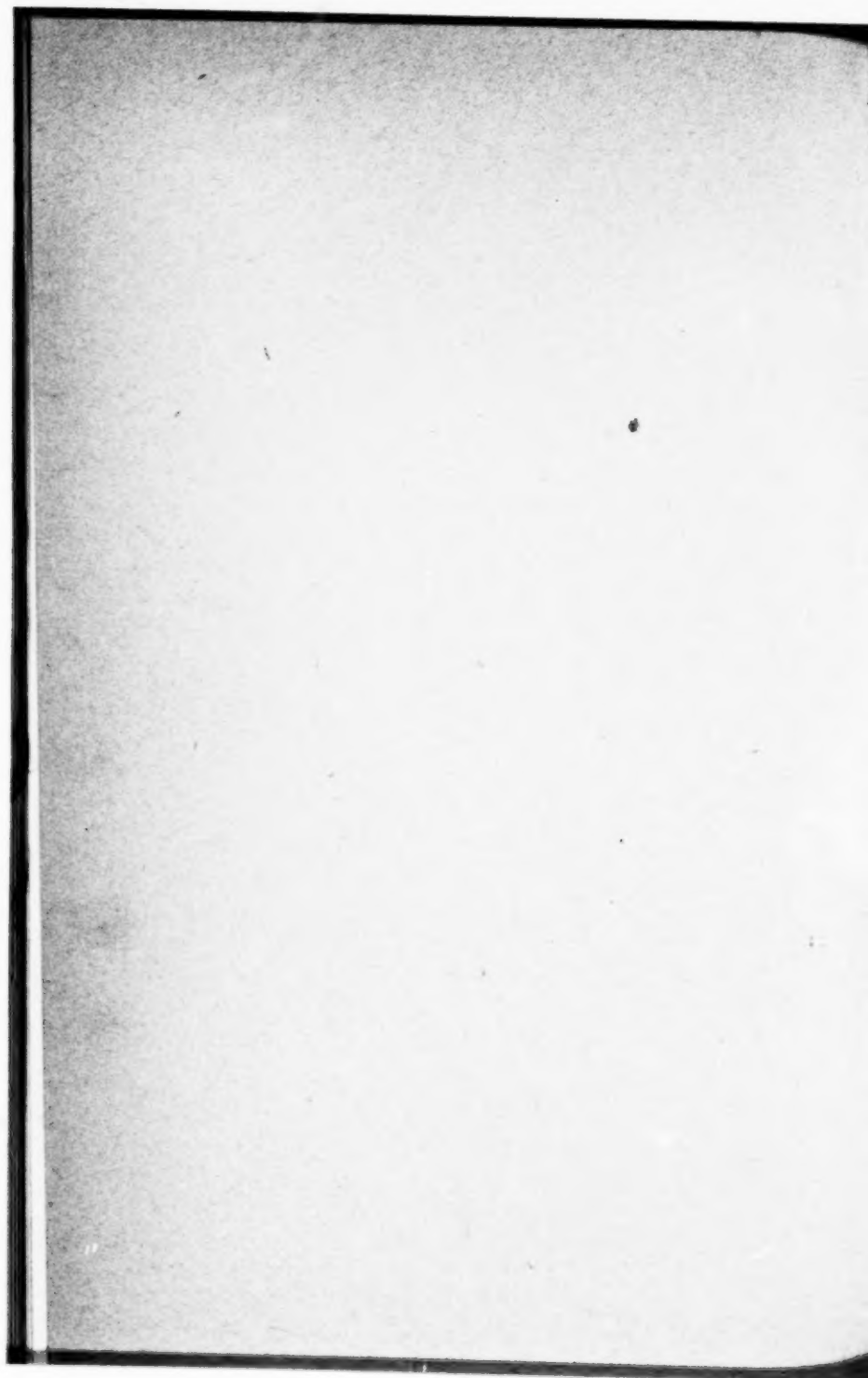
THE FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

RESPONDENT'S BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 245

STATE OF MINNESOTA,

Petitioner,

—vs—

THE FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

RESPONDENT'S BRIEF

STATEMENT

The Respondent, a national bank, resisted proceedings brought to obtain judgments for taxes assessed by the state authorities against respondent's shareholders for the years 1921 and 1922, the defense being that the assessments were invalid, as exceeding the restrictions fixed by the Federal Law, (Sec. 5219, Rev. Sts. U. S.): because (1) the tax on the shares greatly exceeded that imposed on other and competing moneyed capital, (2) the statute authorizing a tax on state banks discriminated against shares of national banks, (3) taxing trust companies upon gross earnings resulted in further discrimination.

At the time the taxes in question were levied Sec. 5219 read:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the Association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in a city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes to the same extent, according to its value as other real property is taxed."

The authority for the levy was Chapter 416, Laws of Minnesota 1921 (Appendix A), the first section of which was:

"Section 1. ASSESSMENT OF BANK STOCK.—

The shares of stock of every bank in this State organized under the laws of the United States, and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located."

The tax rate in the district in which respondent is located for 1921 was 67 mills. (Respt's Ex. A). The taxing authorities found the full value of respondent's shares (exclusive of real estate which was directly taxed) to be

	\$6,093,605.00
40% (Petitioner's Ex. 1—1921).....	2,437,442.00

Assessment at rate of 67 mills (Petitioner's

Ex. 1) 163,308.62

This amount, \$163,308.62, is equivalent to a tax upon full value at a rate of 26.8 mills.

In 1922 the rate was 61½ mills (Respt. Ex. B), which resulted as follows:

Full value (exclusive of real estate) \$6,528,100.00

40% 2,611,240.00

Assessment at rate of 61½ mills (Petitioner's Ex. 1—1922) 160,591.26

The equivalent to a tax upon full value at a rate of 24.4 mills.

Prior to 1906 the Constitution of Minnesota required all taxes to be equal and the statutes of the State regulating the taxation of personal property including moneyed capital and bank shares fairly complied with that provision. (Secs. 835-842 R. L. 1905, Ch. 60, Laws 1905).

In 1906, however, the Constitution was amended and provided that taxes should "be uniform upon the same class of subjects" (Minn. Const. Art. 9, Sec. 1). Since then classifications have been made which finally resulted in placing all forms of moneyed capital, other than shares in national banks, in classes taxed at rates in most instances amounting to not more than one-ninth of that imposed on such shares and in some classes still less and in others resulting in no tax.

In 1907, mortgages upon real estate and executory contracts for the sale of real estate were exempted from all but a registry tax (Ch. 328, Laws 1907). In 1913 this registry tax was fixed at 15 cents per \$100.00 where the mortgage was five years or less, and 25 cents per \$100.00 on those for a longer period (Ch. 163, Laws 1913, Sections 2301, 2315 G. S. 1913, (Appendices B and C).

In 1911 a statute was enacted placing an exclusive tax of 3 mills upon money and credits, but excluding incorporated banks from its benefits (Ch. 285, Laws 1911, Sec-

tion 2316, G. S. 1923, Appendix D). The first section of the statute reads:

"TAXATION OF MONEY AND CREDITS.—

Section 1. 'Money' and 'credits' as the same are defined in section 798 'Revised Laws of 1905' are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

"But nothing in this act shall apply to money or credits belonging to incorporated bank situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907."

Chapter 328, Laws 1907, referred to in the statute just quoted, provided for the registry tax upon mortgages (Appendix B).

Sec. 798, R. L. 1905, Section 1975, G. S. 1913, referred to for the definition of money and credits, provided as follows:

"1. 'Money' or 'moneys' shall mean gold and silver coin, treasury notes, bank notes and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.

2. 'Credits' shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due."

In 1913 there was enacted a statute taxing trust companies upon gross earnings (Ch. 529, Laws 1913, Appendix E). Trust companies receiving deposits are not taxed under this law but are treated as state banks.

This same year, 1913, a general classification of property not already classified was made by (Ch. 483, Laws 1913, Appendix F). By this statute bank shares fell into class 4,

and were required to be assessed at 40% of "full and true" value.

Shares of stock in corporations other than banks went, and still go, entirely untaxed. The terms of Sec. 838, R. L. 1905; Sec. 2015, G. S. 1913, provide for their taxation only in case the value of such shares exceeds the value of all the property of the corporation. (Appendix G). This results in the total exemption from taxation of the shares of financial and investment companies other than banks.

Private banks, brokers and banks without stock pay the 3 mill rate upon money and credits (Sec. 839, R. L. 1905, Sec. 2016, G. S. 1913; (Appendix H). Notes in Tax Manual 1921, Petitioner's Ex. 2, Record p. 381, and Tax Manual 1922, Petitioner's Ex. 3, Record 389). There are no private banks receiving deposits in Minnesota. There are many brokers.

Finally, in 1921, Chapter 416 (Appendix A) was enacted and the gross discrimination against shares in national banks was completed.

When the actions came on for trial in the District Court for Ramsey County the respondent presented abundant evidence of the existence of moneyed capital. The testimony showed the aggregate value of state and national bank shares, the amount of money and credits returned for taxation, a close estimate of the amount annually loaned upon real estate mortgages, the annual amount loaned through brokers upon commercial paper, annual bond sales, the aggregate shares in trust companies and the aggregate of the trusts and accounts held by them, loans to commercial houses by their employees, and the reports to the Federal Reserve bank of the transactions of financial and investment companies.

It was shown by respondent that this moneyed capital came into competition with national banks. The witnesses were thoroughly cross examined. Only one witness as to this

was called by the petitioner who admitted that some of the moneyed capital shown came into such competition. Thus, while its existence was not disputed, whether or not a material amount of such moneyed capital came into competition with the banks was treated as a question of fact to be determined from the evidence.

At the first trial the District Court found against the respondent upon that question, a motion to amend the findings and for a new trial was denied, and upon appeal the Supreme Court of Minnesota reversed the order.

After reviewing the evidence and authorities, the Supreme Court said (Record, p. 322) :

"Several witnesses called by defendant testified that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. The only witness called by plaintiff testified briefly that in his opinion there would be some competition in some of the items among which he included book accounts, but that there would be little or no competition in other items as they did not represent a class of loans or credits in which the banks were dealing.

"The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce."

Respondent's claim that investments in mortgages should be taken into account was disposed of as follows: (R., p. 321).

"Defendant also insists that capital invested in real estate mortgages, aggregating many millions of

dollars, must be considered as competing capital for the reason that since the act of December 23, 1913, (38 Stat. 273), national banks have been authorized to invest a part of their funds in such mortgages, and the national banks of Minnesota had \$19,000,000 invested therein in 1921 and \$25,000,000 in 1922. Failure to tax mortgages at the same rate as bank shares was not a forbidden discrimination prior to this act. *Hepburn vs. School Directors*, 90 U. S., 480, 23 L. Ed., 112; *Adams vs. Nashville*, 96 U. S., 19, 24 L. Ed., 369; *Merchants National Bank vs. Mayor, etc.*, 121 U. S., 138, 30 L. Ed., 895. Whether this act operated to change the former rule has not been passed upon by the United States Supreme Court so far as we are advised. Other decisions are conflicting. It is not necessary to determine the question here."

Respondent's contention that Chapter 416, Laws 1921, created discrimination as a matter of law between state banks and shares in national banks was denied; the Court saying: (R., pp. 321-2).

"Defendant also insists that, although chapter 416 provides the same method for determining the value of the shares of national banks and the value of the money capital of State Banks, it discriminates in favor of State Banks. This claim is based on the fact that in the case of State Banks, the tax is against the bank, not against the shareholders, and the bank is permitted to deduct its tax exempt securities from the value of its property in fixing the amount subject to taxation, while in the case of national banks the tax is against the shareholders, not against the bank, and tax-exempt securities are not deducted in fixing the value of such shares. We think that the method adopted is permissible under the doctrine of *People vs. Commissioners of Taxes*, 71 U. S. (4 Wall) 244, 18 L. Ed., 344; *Mercantile Nat. Bank vs. Mayor, etc.*, 121 U. S., 138, 30 L. Ed., 895; and *Des Moines Nat. Bank vs. Fairweather*, 263 U. S. 103, 68 L. Ed., 191."

Nothing was said in the opinion with reference to our

claim that taxing trust companies upon gross earnings resulted in discrimination.

This brought the actions back to the District Court for a new trial, where they were submitted upon the record already made and that court made new findings, the eighth of which was (R., p. 333) :

VIII.

"That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county, coming into competition with the business of national banks in said county, and with the business of said defendant."

Judgment was entered in respondent's favor and affirmed upon appeal.

SUMMARY OF ARGUMENT

I.

The findings of the Court (1) as to the existence of moneyed capital in the hands of individual citizens of the state, (2) a material portion of which came into competition with national banks and (3) taxed at a lower rate than national bank shares, were fully supported by the evidence and are conclusive.

II.

There was erroneously excluded from this moneyed capital, debts secured by mortgages upon real estate, the inclusion of which while not changing the result would have materially increased the amount of moneyed capital to be taken into consideration.

III.

Upon the facts so found the inevitable conclusion was that the attempted levy of the tax was beyond the power of the State as restricted by Section 5219 Rev. Stats. U. S., and therefore invalid.

IV.

Chapter 529, Laws of Minnesota 1913 (Appendix G) taxing trust companies upon gross earnings, created an unlawful discrimination between the moneyed capital invested in shares of trust companies and those of national banks.

V.

Chapter 416, Laws of Minnesota 1921 (Appendix A) providing for the taxation of national bank shares and the moneyed capital of banks, organized under the laws of Minnesota, created discrimination, inasmuch as under that method state banks had the privilege of deducting from capital and surplus such tax-exempt securities as each held, while the shareholders in national banks had no such right. Therefore, there was no valid statute of Minnesota authorizing the levy of a tax upon shares in national banks.

ARGUMENT

I.

A STATE HAS NO POWER TO TAX NATIONAL
BANKS NOR THE SHARES THEREOF EXCEPT
AS AFFIRMATIVELY PERMITTED BY
CONGRESS.

National banks are instrumentalities and agencies of the United States and a state is without power to assess any tax, either direct or indirect, upon their capital shares or property except by permissive legislation of Congress.

Owensboro National Bank vs. Owensboro, 173
U. S. 664 (668).

There was no grant of power to tax the shares or property in national banks in the National Banking Act of February 25, 1863.

12 *Stats. Ch.* 68, p. 665.

Owensboro National Bank vs. Owensboro,
supra.

The first grant of power is found in Act of June 3, 1864, (13 U. S. *Stats. Ch.* 106, p. 99) which provided (Sec. 41, p. 112) :

“Provided that nothing in this Act shall be construed to prevent all the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state; *provided further, that the tax so imposed under the laws of any state upon the shares of any of the associations authorized by this Act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state where such association is located*; provided, also, that nothing in this

Act shall exempt the real estate of such associations from either state, county or municipal taxes to the same extent, according to its value, as other real estate is taxed." (*Italics ours*).

This Act, omitting the part in italics, was substantially re-enacted in Act of February 10, 1868, 15 Stats. Ch. 7, p. 34, which provides:

***"And the legislature of each state may determine and direct the manner and place of taxing all the shares of national banks located within such state, subject to the restriction that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and provided always that the shares of any national banks owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere."

This Act of Congress so amended became Section 5219 of the Revised Statutes, which read:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, but the Legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents in any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county or municipal tax, to the same extent according to its value as other real property is taxed."

Section 5219 remained unamended until the Act of March 4th, 1923, 42 Stats. Ch. 267, p. 1499, when the states

were given the power to tax the shares, or dividends or income of a national bank.

II.

THE EVIDENCE ESTABLISHED THE EXISTENCE OF MONEYED CAPITAL OTHER THAN SHARES IN NATIONAL BANKS.

While in the broadest sense moneyed capital in the hands of individuals might mean every investment by an individual in a business enterprise, this Court, in construing the Act of Congress has uniformly held the language as there used to mean investments made or brought into competition with national banks or the business of banking. This excludes from consideration investments in manufacturing and mercantile companies as well as some others, but does include money—,

“***** invested in shares of state banks or in private banking, and also where it is employed, substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment.”

*First National Bank of Guthrie Center vs.
Anderson*, 269 U. S. 341, 348.

A previous definition by this Court seems identical:

“By repeated decisions of this court, dealing with the restriction here imposed, it has become established that, while the words ‘moneyed capital in the hands of individual citizens’ do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking so called, but investments of individuals in securities that represent money at interest and other evidences of in-

debtedness such as normally enter into the business of banking."

• *Merchants Nat'l Bank vs. Richmond*, 256 U. S. 635-639.

Our inquiry therefore is not as to the occupation of the individual owner, but as to use made of his capital. If we find a material amount of moneyed capital "employed substantially as in the loan and investment features of banking," or if it is invested in competition with banks, "in securities that represent money at interest and other evidences of indebtedness that normally enter into the business of banking," then the State, as a condition precedent to its taxation of national bank shares, must put such other moneyed capital upon a parity with them.

As condition for the years 1921 and 1922 were substantially similar, we will generally refer to those in 1921.

We first call attention to the erroneous view which the tax authorities of Minnesota held with reference to the restrictions imposed by Sec. 5219.

At the trial of these actions, the state produced a manual of instructions issued by the Tax Commission, of which certain pages were introduced in evidence as State's Ex. 2 and 3 and will be found in the Record at pages 375-389.

Most of these instructions were in the form of question and answer, and at pages 376 and 377 of the record there is the following:

"Q. Can the State tax shares of stock in a national bank located within the State?"

"A. Yes, subject to the Federal Statutes which provide that such tax shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State, and that the tax must be assessed only where the national bank is located."

The same question and answer were contained in the manual issued for 1922 (R., p. 384).

The existence of moneyed capital was undisputed. The

very extensive evidence of its competing character was also practically uncontradicted by any witness or testimony. The *claim* that no competing moneyed capital had been shown rested upon the adroit arguments and assertions of counsel for petitioner. If these created a question of fact, it was determined adversely to the petitioner by the Minnesota Court in construing the laws of Minnesota.

A huge amount of moneyed capital was shown to exist in the State and County where respondent bank is located.

Money and Credits were returned for the year 1921 to the amount of \$425,745,839.00 for the entire state, of which \$83,965,268.00 was in Ramsey County (R., p. 151).

By computing the registry tax paid on mortgages, Mr. Bacon, Secretary of the Tax Commission, estimated the annual mortgage loans to be from \$184,560,000 to \$307,600,000. (R., p. 153), and as such loans are nearly always for long terms, an estimate of existing loans to the amount of one billion is not extravagant.

Annual bond sales in the state were estimated at fifty million. (C. O. Kalman, R., pp. 121, 123). Bonds ordinarily run for a much longer period than do mortgages, so the total investment in bonds was many times fifty million.

Investment companies in the cities of St. Paul and Minneapolis reported to the Federal Reserve Bank of Minneapolis sales of securities in 1921 to the amount of \$81,333,692. (Respt's Ex. Q).

Commercial paper annually purchased by note brokers and persons other than banks amounted to one hundred million. (Lindeke, p. 124; Sommers, p. 127; Shepard, p. 131; McLaren, p. 136).

Trust estates and the like exclusive of real estate held by three trust companies amounted to more than fifty million (Stevenson, p. 26; Smith, p. 37; Davis, pp. 65, 66; Fellows, p. 140).

The value of shares of stock in all trust companies and

some investment companies found by including surplus, etc., but deducting real estate was more than thirteen million (Respt's Exs. C and J; Lillibridge, p. 191; Oehler, p. 80). Cattle loan paper sold in Minnesota in 1921 amounted to \$5,276,090.00 (Respt's Ex. R). Loans made to commercial houses, customers of respondent bank, by their employees or officials, one and a half million (Brown, R., p. 204; Sommers, R., p. 126).

The value of shares in state banks and trust companies receiving deposits exclusive of real estate was \$43,681,688.40 (Respondent's Ex. C).

The value of shares in national banks found in the same manner was \$60,671,000.00 (Respondent's Ex. M).

In this list, amounting to more than two billion dollars, there are some duplications and also tax-exempt securities are included, and we submit the following further analysis:

Money and Credits were returned as \$425,745,839, this should cover commercial paper purchased by note brokers, trust estates, cattle loans, loans to commercial houses and some bonds, but not government, state or municipal securities, shares of capital stock of Minnesota corporations, bonds of corporations paying taxes in Minnesota nor mortgages.

Money and Credits are, by the tax authorities, divided into fifteen items (Bacon, R., p. 151; Respt's Ex. K). In 1918 the Tax Commission made a segregation of the items and the percentage which each bore to the whole; this is applicable to the year 1921 (Bacon, R., p. 152; Respt's Exhibit H.) Taking the total amount returned in the state for 1921—\$425,745,839—and dividing it by the percentages given in Respt's Exhibit H, we have the following:

1. Money subject to check and on deposit in banks, trust companies or similar financial institutions wherever situated, 18.18%\$77,400,593.00

2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks or similar instruments, 12.65% . . . 53,856,848.00

3. Money other than as above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere, 1.64% . . . 6,982,231.00

4. Promissory notes, bills of exchange, due bills, cream checks and similar evidences of indebtedness, 10.13% . . . 43,128,053.00

5. Bonds, except United States Bonds and Bonds issued by the State of Minnesota or any Municipality thereof, and such as are secured by real estate mortgages recorded in this state, 4.51% . . 19,201,137.00

6. Real estate mortgages upon lands situate outside of this state and amount secured thereby, 3.87% 16,476,363.00

7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby, 0.68% . . 2,895,071.00

8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby, 0.86% 3,661,414.00

9. Judgments in this state or elsewhere, 0.21% 894,066.00

10. Book accounts, 34.34% 146,201,121.00

11. Contracts for sale of real estate outside of this state, 0.63% 2,682,198.00

12. Contracts for sale of real estate in this state which have not been recorded, 1.53% 6,513,911.00

13. Annuities, royalties and all sums of money receivable at stated periods, 0.15% 638,618.00

14. All claims and demands for money or other valuable thing not above enumerated, 4.16% 17,711,026.00

15. Shares of stock in corporations the property of which is not assessed or taxed in this state, 6.01% 25,587,324.00

Segregations were also made for Ramsey County, not only as to the items (Respt's Ex. I) but also each item was apportioned between individuals and corporations (Respondent's Ex. K), which we feel it is unnecessary to more than refer to.

While money and credits should thus include taxable bonds, commercial paper, etc., we have called attention to the volume of transactions in those securities because no matter how small they may appear upon the tax list, the extent of the actual dealings in those securities becomes of the highest importance upon the question of competition.

Taking money and credits, \$425,745,839.00, as including taxable bonds, commercial paper, property of investment companies, trust estates, cattle loans and private loans to commercial houses, we have the following tabulation of Moneyed Capital in Minnesota for the year 1921: In this tabulation we have included no amount for nontaxable bonds: those consist of Government, Municipal and bonds secured by mortgage on real estate in Minnesota. The last should be included in the amount given for mortgages and while the amount of such bonds outstanding must be very great (Kalman, R., p. 123) we have in order to avoid duplication omitted any amount therefor.

TABLE SHOWING MONEYED CAPITAL IN MINNESOTA
FOR THE YEAR 1921—TAX RATE AND TOTAL TAX

Description	Amount	Tax Rate		Total Tax
		Per Dollar		
Money and Credits.....	\$ 425,745,839.00	3 mills		\$1,277,237 @ 3 mills
Mortgages on Real Estate.....	1,000,000,000.00	1½ to 2½ mills		2,500,000 @ 2½ mills
Shares State Banks and Trust Co's. Receiving Deposits.....	43,681,688.40	untaxed as such		
¹ Shares Other Trust and In- vestment Companies.....	2,485,000.00	untaxed as such		
² Shares of National Banks.....	60,671,000.00	67 mills on 40% =		1,626,250.80 @ 26.8 mills on full value
Non-Taxable Bonds.....	Many millions but amount not determined			

¹This is believed to be a very inadequate showing as to Investment Companies

²Using the tax rate in Ramsey County

Nearly all of this moneyed capital was represented by securities which normally enter into the business of banking. Since the establishment of the Federal Reserve Banks, national banks may, and do, lend money on real estate mortgages. They, of course, deal in commercial paper, buy and sell bonds, and take and hold as security for loans other bonds and stocks. Some national banks maintain bond departments (R., Smith, p. 46), and also, since the Federal Reserve law, may be authorized to act as trustee, executor, etc. The testimony showed to some extent the dealing in those securities by banks in Minnesota during the year 1921, and we give a tabulation of mortgages, bonds and stocks held by banks—the table, of course, does not include general loans and discounts, nor the collateral held with such loans.

TABLE SHOWING INVESTMENTS IN MORTGAGES, BONDS AND STOCKS BY NATIONAL
AND STATE BANKS IN MINNESOTA COMPARED WITH TOTAL VALUE OF
SHARES IN EACH CLASS OF BANKS

Description of Security	National Banks	State Banks and Trust Com- panies	
		Not Given	Respt's Ex. C.
Mortgages	\$19,713,000.00	Respt's Ex. N.	
U. S. Government.....	41,190,000.00	Respt's Ex. M.	\$13,866,927.91
Other Bonds, Stocks and Securities	33,894,000.00	Respt's Ex. M.	70,372,789.16 ¹
TOTALS	\$94,797,000.00		\$84,239,717.07
Value of Shares Excluding Real Estate	\$60,671,000.00	Respt's Ex. M.	\$43,681,688.00 ²
Amount of Securities in Excess of Value of Shares.....	\$34,126,000.00		\$40,558,029.07

¹Undoubtedly includes mortgages

²Two stock savings banks included

It appears from the foregoing tabulation that the holdings of Minnesota banks, both state and national, in mortgages, bonds and stocks, exceeded, in a very substantial amount, the aggregate value of the shares in each class of banks.

When a mortgage is owned by an individual or partnership, obviously the registry tax is in full. When owned by an investment corporation, its shares not being taxed, the only amount paid is the registry tax. When we come to national bank shares, we find the registry tax must be paid as in other cases, and, in addition, the mortgage may not be left out of the assets to be considered in determining the value of the shares so an additional tax and at a rate about twelve times as great, is exacted from the shareholders on account of the mortgage.

This discrimination is still more obvious in the case of tax exempt bonds, particularly United States bonds, and will always exist where the tax in one class of financial corporations is assessed directly upon the property and in the other upon the shares of stock, and the greater the spread between the rate upon the shares and that upon items of property directly assessed, the greater will be the discrimination.

The discrimination is between individual citizens, shareholders in the respective corporations when the securities are owned by corporations, and between the holders of shares in national banks and individual owners of such securities untaxed in their hands.

Mortgages were shown to have been held by investment companies engaged in the business of dealing in such securities, and also by individuals who, at least to the extent of their investments, were similarly engaged.

Respondent's Exhibit Q shows that eighteen investment houses located in St. Paul and Minneapolis reported sales

of mortgages in 1921, amounting to \$14,036,069.00. Eleven of those so reporting were Minnesota corporations (Lillibridge, R., p. 186). The Exhibit does not include all investment houses, only those reporting (Lillibridge, Record, p. 190.) It included some trust companies, but no banks (Lillibridge, Record, p. 192.)

Mr. Soucheray, of the St. Paul Abstract Company, after an examination of the records, found that in the year 1921 mortgages amounting to \$9,889,047 had been recorded in Ramsey county alone, of which \$6,351,105 were owned by individual residents of that county (Soucheray, R., p. 147).

Much other evidence to the same general effect, but confined to the dealings of trust companies was given by Messrs. Stevenson (R., pp. 19-36); Smith (R., pp. 36-47); Mulcahy (R., pp. 56-63); Davis (R., pp. 63-74); Armstrong (R., pp. 93-108); Fellows (R., pp. 138-144).

These mortgages were all taken and dealt in as an important part of the investment business; the shareholders of the corporations devoted the price of their shares to its maintenance, the customer used his moneyed capital for the same purpose, for without the customers, the business could not have been carried on, and thus the individual shareholder, the individual purchaser, and the investment corporation all co-operated in carrying on the business of investing moneyed capital in securities which normally enter into the business of banking.

What we have said as to mortgages applies equally to bonds with the difference only that taxable bonds are required to be listed as money and credits, taking the 3 mill tax.

There were in the state in 1921, 26 trust companies receiving deposits with capital stock of \$7,647,907.42 (Respt's Ex. C) and fifteen with aggregate capital stock of \$2,135,000.00, which paid taxes upon gross earnings (Respondent's Exhibit J).

The shares of these companies were largely held by citizens of Minnesota (Davis, R., p. 74).

Three trust companies were shown to have in their custody and control in trust estates and the like exclusive of real estate something more than fifty million, of which the greater part must have been invested in securities such as we have been considering. (R., Stevenson, p. 27; Smith, p. 38, 39). Ninety per cent of these trusts were held for individual citizens (R., pp. 27, 38, 39).

Stock held by individual citizens in financial corporations is beyond all question moneyed capital within the meaning of Sec. 5219, Rev. St. U. S.

The existence of such moneyed capital was shown.

Mr. Lillibridge testified that of the investment houses reporting to the Federal Reserve Bank of Minneapolis (Respondent's Ex. Q) eleven were Minnesota corporations (R., pp. 185, 186). This may have included some trust companies (p. 192).

We realize a much more complete showing could have been made as to corporate stock in financial companies, but a substantial and material amount of that character of moneyed capital in the hands of individual citizens of Minnesota was shown by uncontradicted evidence (R., Stevenson, pp. 19, 27; Smith, p. 36; Davis, p. 74; Oehler, p. 80; Lillibridge, p. 193, and as to shares in state banks, Lundin, pp. 77, 78).

III.

IT WAS ESTABLISHED BY THE EVIDENCE THAT THE MONEYED CAPITAL SO SHOWN TO EXIST CAME INTO COMPETITION WITH NATIONAL BANKS.

That the moneyed capital shown to exist came into competition with national banks was established by overwhelming and practically undisputed oral evidence.

Mr. Cyrus P. Brown, President of respondent bank, testified in detail as to such competition. His experience as a banker, thirty-five years in Rhode Island and Minnesota, (R., pp. 195-6) fully qualified him as a witness of unusual value.

Mr. Brown's testimony appears in the record upon pages 195-232 and again at pages 261-263. After a general description of banking activities, he was questioned as to competition between different forms of moneyed capital, and we quote as follows from his testimony, page 198:

"A. The national banks are, you might say, substantial reservoirs of credit. Almost every individual is, to a greater or less degree, a smaller reservoir of credit. If he loans money on a mortgage or on a bond, to his brother or his cousin or his aunt, or to anyone else, that is in competition with us, because it takes from us a possible customer. We often have cases where a man will check money out and loan a relative. We happened to know of the transaction. So it acts in both ways. It takes money out of our bank, and, of course, in the aggregate, that is a very large amount."

(Page 199):

"A. Why, any money invested in corporate securities or any other kind of securities comes in competition with anyone who loans money on those securities or on other securities—can't help doing so.

"Q. And that applies to all of the securities held and dealt in by national banks?

"A. Yes.

"Q. Real estate mortgages, municipal bonds?

"A. Yes, anything that takes money.

"Q. What is that?

"A. Anything that takes money, because that is the commodity we sell. The commodity furnished by anybody else is in competition with us."

(Page 201):

"Q. So that the more available money there is in

any community, in any state or in any country for investment for loan and interest, affects the rates?

"A. It does.

"Q. And state whether or not in that way all of the money of any community or state or country necessarily is in competition.

"A. It is." * * * * *

"Q. Now, Mr. Brown, I would be very glad if you would go on and explain this in your own way any further.

"A. Why, as far as competition is concerned, the banking business is one business in the world that almost anyone can compete with without a sign, without even an office. If a man has an apple stand on the street, he has to get his location, get his merchandise and do business, but a man can compete with a bank with simply some money in his pocket. If he makes a loan to his brother, to his cousin, to his aunt, to his father, that loan is in competition with the bank because it takes from the bank the possibility of loaning its own money to that person.

"Q. There is one other form of competition that I would like to call your attention to and get your judgment upon. Is it true that the investment of money by individuals or firms or corporations in securities such as real estate mortgages, municipal bonds, corporation bonds, United States government bonds, and warrants, reduces the amount of deposit in the banks?

"A. It certainly does. In other words, if people don't put it in an investment they would keep it on deposit in the bank. People who invest money very rarely keep money elsewhere than on deposit in the bank. They don't keep it in their house or in their cellar or places like that. Take a man who is intelligent enough to invest his money, he puts it in a bank. When he makes an investment he draws it out of the bank."

(Page 204) :

"Q. Now, when you speak of the competition of money in loanable funds generally of the national

banks, you don't particularly speak of a competition which you can directly and tangibly feel at your bank, do you?

"A. Oh, yes, indeed, we can feel it. Of course, we can feel it.

"Q. That is, you feel it in respect to the—

"A. We know there is a large volume of money loaned to our customers that we ourselves should loan. Just as an instance of that—just before coming here the other day, I took at random eleven statements of borrowers of ours and I found nearly a million and a half dollars loaned to them by the officials or employes of companies. There is a case where we would directly feel it. That is money that we would naturally loan ourselves, but it is loaned to them by the individual."

(Page 208) :

"Q. How is it that a broker can loan money to one of your customers and sell that paper to you, after taking off his discount, for—

"A. I am very glad to answer that, because you asked two or three witnesses yesterday, and they apparently didn't know. The reason for that is, that a broker in selling the paper does not disclose—In the first place, the man that holds it—it may be an individual, it may be a corporation. When he sells that paper he sells it with no agreement to renew. There is absolutely no responsibility. The man knows when he takes that piece of paper that it will be paid when it is due. He gets it without any obligation on his part. Now, when we loan a customer, why that money goes with a call. We know that we have got to take and renew that man's note if he can't pay it at maturity. The broker when he sells a note—the broker has an advantage over us. When he sells that paper he sells that paper with absolutely no condition to it, it has to be paid when it matures. The man knows when he has a note maturing. It isn't so with a jobbing house, it has to pay that note or fail. While with us, we know that if we loan a local jobber here some money and it

isn't convenient for him to pay when it becomes due, we have to renew that note whether we want to or not. In other words, our customers have a call on us for so much money, and that calls is—Mr. Sommers, I think it was, testified yesterday that his note broker wanted to know if he had any paper that he bought that he had lines of credit open with the bank so he would be sure to have to pay it when it was due. That is where the competition is very difficult for us. In other words, these people have a call on us for so much money and when we wish to loan them the money they won't take it; when we don't want to loan it, they come in and ask for it."

(Page 212) :

"Q. Now, in what way do you at your bank feel the competition of real estate loans?

"A. Well, anything that takes money is competitive with us, who are loaners of money. In other words, a man if he can't borrow on a real estate loan, why he would come and borrow at the bank on an endorsement, have to borrow his money some way or put up security of some kind, put up the real estate loan, for that matter, borrow of us on real estate."

(Page 218) :

"Q. They buy bonds with a view of selling them at a profit?

"A. Well, we all do. If we couldn't sell at a profit we wouldn't buy them. If we didn't think we could sell them at a profit we wouldn't buy them.

"Q. Insofar as your statement as introduced here indicates ownership of bonds—take government bonds on May 1, 1921, you held government bonds, in round figures, three and a half million. Were these bonds held by you with a view to sale?

"A. Yes, we held them, I think, about three and a half million. In 1922 we had eleven or twelve million, I think. We later went up. I think we held at one time over twenty million dollars of government bonds and securities. Today we hold a little over nine

million dollars. We employ our money that way and sell them if we think the market is—

“Q. Is that the primary purpose of it?

“A. The primary purpose is to make money.

“Q. I mean make money by selling at a profit.

“A. Make money by selling at a profit and getting our interest—two things.”

(Page 223) :

“Q. Do you consider that these investment houses in selling the bonds of public service corporations come in competition with national banks?

“A. Come in competition in a broad way, that they take money that otherwise would be loaned by us.

“Q. Only in that broad way?

“A. Well, we buy public service bonds; national banks buy public service bonds; if they sell to somebody else, why they are in competition.

“Q. That would be true of railroad bonds, investment houses dealing in any way by buying or selling railroad bonds, would, in a broad way, come in competition with national banks?

“A. Yes.”

Beginning on page 226 will be found Mr. Brown's testimony where he was cross-examined with reference to each of the fifteen items comprising listed money and credits to which we respectfully call the court's attention.

Mr. Smith, vice president and trust officer of Minnesota Loan & Trust Company, testified as to competition (R., pp. 38-47).

Mr. Mulcahy described the competition as to mortgages (R., p. 61).

Mr. Davis testified as to various investments of trust companies (R., pp. 63-74).

Mr. Armstrong, vice president and trust officer of Merchants Trust and Savings Bank, said (p. 105) :

“Q. So, eliminating investments in industrial occupations, and confining your statement to investments

in either shares of stock or purchase of bonds or mortgages where the return is to be interest upon the money, is not all that money in competition?

"A. Always.

"Q. Necessarily?

"A. It must be."

Mr. Fellows, vice president of Capital Trust and Savings bank, said (p. 143) :

"Q. Is it not true that all money that is loaned at interest in a community necessarily competes with all other money that is also loaned at interest?

"A. It does, in a broad way, yes."

Mr. Simons, President of Twin Cities National Bank, said (p. 176) :

"Q. Will you state with what money investments, moneyed capital and business transactions that a national bank comes into competition in this state?

"A. Generally speaking, it comes into competition with every other person and corporation that is in the market to loan money within the limits that we are permitted to lend by law. I mean by that we can't take mortgage loans for longer than five years nor city loans for longer than one.

"Q. What do you mean by every person who lends money?

"A. Most everybody that is in the market to lend money wants to lend it, and we want to lend it, and there is competition there, in regard to the matter of rates in our neighborhood.

"Q. Under what class do you place people that purchase mortgages from them?

"A. They are investors who want to invest their funds, apply sometimes to us, sometimes to other people.

"Q. Do you call that lending money?

"A. On their part?

"Q. Yes.

"A. Yes.

"Q. That is what I want to ask you: what you

mean by lending money: Do you mean buying securities is lending money? You used the term lending money as including the purchase and investment in securities.

"A. Yes.

"Q. So that your answer is that everyone who makes an investment in a security because of the return that he will receive in interest for that security is lending money?

"A. Yes.

"Q. Is in competition with the bank?

"A. Yes.

Mr. Simons also testified that his bank held mortgages amounting to from seventy to ninety thousand dollars.

As against this testimony, which went to the details of the making of various investments and the use of moneyed capital by individuals and corporations, the petitioner called one witness, Mr. Thornton, who testified principally with reference to the items making up listed money and credits, and even he found competition between banks and some of the moneyed capital so listed. Mr. Thornton's testimony appears on pages 233-249 of the Record.

The purpose of Congress, when allowing the states to tax shares of national banks, to limit the power to a tax which should be fair as compared with that imposed upon other similar property in the hands of individual citizens is obvious.

It is also obvious, as has been said by this Court, that the comparison is not to be made with all property, nor was it intended to interfere with the general plan of taxation which a state might adopt so long as discrimination between national bank shares and other moneyed capital coming into competition with such shares did not result. This Court has therefore excluded from consideration various investments which do not come into competition with banks. Thus, shares in manufacturing and mercantile corporations were

excluded, for the reason that although the purchase of such shares by an individual was the investment of his moneyed capital, still the business of the corporation being entirely different from the business of banking, such investments were excluded. Investments in building societies and in savings banks were excluded for somewhat different reasons. Originally debts secured by mortgage upon real estate were excluded because national banks were without authority to lend money upon such security.

Other moneyed capital, however, when used for the purpose of securing a return from its use as money, and particularly when invested in securities which normally enter into the business of banking, has always been held as moneyed capital within the intent of the act of Congress when its use was such as to bring it into competition with the business of national banks.

The competition required is obviously such as arises from the use of the capital itself and not from the occupation of the individual owner; for, it is the classification of the capital which is material rather than the individual who happens to own it.

It may be conceded, also, that the merely personal investments of small amounts by individuals would not establish the existence of moneyed capital.

The amount of such competing capital must be material, but that is a question of degree, and if purely personal investments in securities which normally enter into the business of banking were sufficiently extensive, they would, in the aggregate, constitute just as sharp competition as would the investments of a single private banker to the same amount, although in one case the individuals might not be engaged in the investment business and, in the other, the individual would be exclusively so engaged.

Money is a commodity, and the price of money is the

interest paid which is fixed by the amount of money seeking investment, whether it comes from individuals loaning their money for mere personal investment or from individuals engaged in the banking business. It is not the source from which competition comes, but the amount of it, that fixes the price. The price of money, like the price of grain or any other commodity, is fixed and regulated by supply and demand.

Mr. Brown, President of the Respondent Bank, in his testimony applied this economic law to the business of banking, as also did the other witnesses called by the Respondent.

Had Congress intended to limit competition to that caused by state banks and investment houses, it would not have used the language "other moneyed capital in the hands of the individual citizens of the state." Obviously it was believed, if the investments and activities of individuals were to be disregarded, the great bulk of the moneyed capital owned by individuals in the different states might be so favored in the matter of taxation that national banks could not exist.

Boyer vs. Boyer, 113 U. S. 689.

In the case of *First National Bank of Guthrie Center vs. Anderson*, 269 U. S. 341, it was said that the definition of competing moneyed capital found in the case of *Mercantile National Bank vs. New York*, 121 U. S. 138, would exclude mere personal investments. There are many reasons we submit why that language should not be taken to apply here.

Judgment had been entered in the state court upon a demurrer to the complaint. Whether the complaint stated a cause of action was the only question before this court for its decision. The allegations relied on by the plaintiff are set out in the opinion of this court beginning at page 343.

The complaint after alleging a tax upon national bank shares at the rate of 143.5 mills, alleged:

"That under the laws of Iowa a levy of only five mills on the dollar is imposed upon notes, mortgages and other evidences of debt, and investments of individuals in securities, which represent money at interest, and other evidence of indebtedness such as normally enter into the business of banking****. That the amount of notes, mortgages and other evidences of money loaned and put out at interest by individual citizens in the town of Guthrie, Iowa, was***** 'more than five millions of dollars' *****while the total of all bank stock ***** does not exceed the sum of \$316,852.*****

"That said assessment is erroneous ***** because by said assessment the shares of stock of the plaintiff are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individual citizens in said state, used and utilized in the same business."

These allegations were by this court held sufficient to state a cause of action, which was the only question necessarily decided in that case. The cause arose prior to the amendment of Section 5219 by the Act of March 4, 1923, and in passing upon the contention of the State of Iowa that the amendment was a legislative construction of Section 5219 prior to its amendment, this Court said (p. 350) that in this respect

"***** In legal contemplation and practical effect the restriction was the same before the re-enactment as after."

Inasmuch as this court had uniformly held that the term "moneyed capital" as used in Section 5219 prior to the amendment, referred only to moneyed capital so used or invested as to bring it into competition with the business of banks, this conclusion as to the effect of the amendment is, we submit, in harmony with those prior decisions since the amendment excluded merely "personal investments *not made in competition with such business.*"

It may also be true that whereas investments in state bank shares or financial corporations as well as the activities and investments of private bankers and those directly engaged in the business of making investments of moneyed capital are *per se* competitive, the mere personal investments of an individual may, or may not be so, depending upon the extent and character of such transactions. But if in fact competitive, such investments come within the terms of Section 5219 before and after the amendment.

It would be difficult to find an instance where the decisions are more uniform than upon this subject. From the beginning this Court has held the words "other moneyed capital in the hands of individual citizens" to mean capital so invested as to bring it into competition with banks. Unless the capital was employed in the same manner as that of banks there existed no reason for requiring equality in the tax upon such capital and bank shares. Obviously it included something more than the direct competition of banks and investment houses or the amendment of 1868 would not have been made by which the special reference to the shares of state banks was stricken from the statute (15 St. at Large, Ch. 7, p. 34).

It is also plain that if the individual is at liberty to invest his capital in securities such as the notes, bonds, demands and credits which normally enter into the business of banking, and pay upon such investment a lower tax than would be required of him upon his investment in national bank shares, there is discrimination against those shares.

Mercantile Natl. Bank vs. New York, supra.

Since competition is a question of fact to be determined in each case as it arises, this court has never attempted to do more than announce the controlling principles upon which this class of actions must be determined and apply those principles to the facts in the particular case then before the Court.

The Court did, however, describe the class of securities, investments in which *might* bring the moneyed capital of the individual investor into competition with national banks, and at the same time described other investments which could not be considered competitive.

One of the earliest cases was

People vs. Weaver, 100 U. S. 539.

where it was held that a state law permitting a citizen to deduct his debts from the amount of his moneyed capital, except bank shares, violated the Federal law. There was no distinction made as to the nature of the business or occupation of the individual citizen but only as to the character of his investments. The Court in determining the Congressional intent (p. 543) declared it was as though Congress said :

“***** You may tax the real estate of the banks as other real estate is taxed, and you may tax the shares of the bank as the personal property of the owner to the same extent you tax other money capital invested in your state.”

This language was quoted with approval in

Boyer vs. Boyer, 113 U. S. 689.

In that case the question was whether the laws of Pennsylvania prescribed a higher tax upon national bank shares than upon

“***** bonds or certificates of loan issued by any railroad company incorporated by the state; from shares of stock *****; from mortgages, judgments and recognizances of every kind; from moneys due ***** for the sale of real estate *****.” (p. 699).

and the state statutes were held to violate the provisions of Section 5219, Rev. St. U. S.

Again in referring to the interpretation placed upon the Federal statute by the Supreme Court of Pennsylvania, it was said (p. 702) :

“***** If by this language it is meant that an illegal discrimination against capital invested in national bank

shares cannot exist where no higher rate or heavier burden of taxation is imposed upon them than upon capital invested in state bank shares or in state savings institutions, we have to say that such is not a proper construction of the Act of Congress. Capital invested in national bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by state authority as the state establishes for other moneyed capital in the hands of individual citizens however invested, whether in state bank shares or otherwise."

A statute of Indiana was held invalid in *Evansville Bank vs. Britton*, 105 U. S. 322. There the taxpayer was required to list (p. 324) :

"1. Credits or money at interest, either within or without the state, at par value.

"2. All other demands against persons, or bodies corporate, either within or without this state.

"Total amount of all credits."

From the sum of these amounts *bona fide* debts might be deducted, and in determining the effect of such statute this court said (p. 324) :

"The Act of Congress does not make the tax on personal property the measure of the tax on bank shares in the state, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital. But the rights, credits, demands, and money at interest mentioned in the Indiana statute, from which *bona fide* debts may be deducted, all mean moneyed capital invested in that way."

The next case in this Court to which we wish to call attention is the leading case of *Mercantile National Bank vs. New York*, 121 U. S. 138.

The Evansville case was upon the October, 1881, term and the Mercantile case was decided April 4, 1887. During this period only one or two changes occurred in the personnel of this Court.

In the Mercantile case, when giving the "key" to the interpretation of Section 5219, this Court said (p. 154):

"***** The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, *and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking.****** The main purpose ***** was to render it impossible for the state in levying such a tax to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business *and operations and investments of a like character.*" (Our italics).

And at page 157:

"The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment."

It is apparent the Court, by this language was not limiting moneyed capital to that owned by a banker or individual whose *business* was banking or the making of investments for after describing such *business* it was pointed out that the act of Congress also included money in the hands of individuals employed in a similar way, not that the indi-

vidual is so employed, but that the money is "invested in loans," etc.

One of the prior decisions referred to in the Mercantile case was

People vs. Commissioners, 4 Wall. 244.

In that case the court in referring to the act of Congress said (p. 256):

"This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the state, who make its laws and provide for its taxes."

Certainly by this language the Court meant to include the citizens of the state generally, those engaged in many different occupations but making investments and putting their surplus funds at interest as the occasion offered. If they, in the aggregate, made such investments to a material amount, and such investments were in securities which normally enter into the business of banking and were in fact made in competition with the business of banking, then the tax upon them formed the test upon which discrimination was to be determined.

In 1921 there came before this Court

Merchants Natl. Bank of Richmond, Va. vs. City of Richmond, 256 U. S. 635.

and this Court said (p. 638):

"The Supreme Court of Appeals entertained the view that the purpose of Sec. 5219, Rev. Stats., was confined to the prevention of discrimination by the States in favor of state banking associations as against national banking associations, and that since none such is shown here there was no repugnance to the federal statute. This, however, is too narrow a view of Sec. 5219."

And at page 639:

"By repeated decisions of this court, dealing with the restriction here imposed, it has become established

that, while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into *direct* competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter in the business of banking." (Our italics).

After referring to *Mercantile Bank vs. New York*, supra, and other decisions of this Court, it was said (p. 641):

"No decision of this court to which our attention is called has qualified that rule, or construed Section 5219 as leaving out of consideration the rate of state taxation imposed upon moneyed capital in the hands of individual citizens invested in loans or securities for the payment of money, either for permanent or temporary purposes, where such moneyed capital comes into competition with that of the national banks."

It cannot be said that this decision was based upon the theory that the moneyed capital shown to exist was in the hands of persons whose business was the making of investments. For, after referring to the aggregate moneyed capital shown, the Court said (p. 638):

"It is to be inferred that a substantial part of this aggregate was in the hands of individual taxpayers; the precise amount does not appear."

In referring to the *Richmond* case this Court in *First National Bank vs. Anderson*, supra, said (p. 348):

"In the briefs there is some discussion as to whether our decision in *Merchants Natl. Bank vs. Richmond*, 256 U. S. 635, attributed to the term 'other moneyed capital' a wider meaning than was recognized before. But nothing was said in the opinion indicating that an enlargement was intended. On the contrary, it dis-

tinently accepted the meaning adopted in prior decisions."

Later the Court said (p. 349):

"If the outcome was open to criticism, it was not because any enlarged meaning was attributed to the term 'other moneyed capital,' but because the facts bearing on the question of competition were not sufficiently brought out at the trial and shown in the record."

The testimony produced in the Richmond case as to competition was, as said by this court "somewhat meager." It consisted of the testimony given by Mr. McAdams, Vice President of the Bank, and is found at page 47 of the record:

"Q. Will you kindly state whether or not money capital in the hands of individuals invested in bonds, notes and other evidences of debt, comes in competition with national banks.

"A. Yes.

"Q. Will you kindly explain how this is so.

"Mr. Pollard: I object.

"The Court: Objection overruled.

"Mr. Pollard: Exception.

"A. Our assets are invested in bonds, notes and other evidences of debt. The loan or money or the extension of credit is simply regulated, or largely regulated, by supply and demand. The more money there is to be loaned by individuals or corporations the natural tendency is for a lower rate than a bank can get in a similar investment. In other words, the greater the competition the lower the rate; the greater the demand, the higher the rate."

On that testimony this court said (p. 638):

"It also was shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes and other evidences of indebtedness comes into competition with the national banks in the loan market."

The evidence produced in this case is not only much stronger and more comprehensive than that given in the

Richmond case but is more satisfactory because it was not here ignored as it apparently was in that case. Here counsel were fully alive to the question of competition and endeavored by searching and adroit examination to argue the witnesses out of their positions but finally were unable to present any substantial evidence in contradiction.

In the actions at bar the Supreme Court of Minnesota commented upon the evidence in the language we have already quoted (R., p. 322) :

We confidently submit, therefore, in view of the summary of prior decisions and the statement that no extension of the definition of "moneyed capital" was intended in the Richmond case found in the opinion rendered by this Court in *First National Bank of Guthrie Center vs. Anderson, supra*, that the decision there amounted to a distinct approval of the definition given in the Richmond case, and that the language in the opinion referring to personal investments cannot be taken to qualify that definition even though our suggestion that it was *obiter dictum* is without merit.

It is unimportant here whether mere personal investments come within the meaning of Section 5219, as neither the evidence nor the findings were confined to investments of that character; there were included the regular transactions, business and investment of trust companies, note brokers, investment houses and shares of stock in financial companies.

It was shown that trust estates and agency accounts held by trust companies amounted to over fifty million dollars, ninety per cent of which was held for the benefit of citizens of Minnesota, and that ninety per cent of those millions, amounting in the aggregate to almost the total value of the shares of national banks in Minnesota, was invested in securities which normally enter into the business of banking.

These investments were not the personal investments of any individual. They were made in the course of and as a part of the business carried on by the trust companies. They were made in competition with the banks and any affiliation between some banks and some trust companies could have no bearing upon this class of the activities of the trust company since it would be its duty to act solely with regard to the best interests of the *cesti qui trust*. The extent to which investments were made in real estate mortgages was shown and some segregation of such investments between corporations and individuals.

How and what part of this moneyed capital came into competition with the business of national banks was shown by competent and practically uncontradicted testimony, and the findings made upon that showing if placed in parallel columns with the findings of this court in the Richmond case and the allegations of the complaint in the Anderson case, would we submit, be sufficient to establish that the judgment of the Supreme Court of Minnesota must be affirmed.

It may sometimes be difficult to determine whether or not the equality required by Section 5219 has been preserved. But, where, as in this case, we find national bank shares singled out from all other forms of moneyed capital and taxed at a rate about nine times as great there can be no claim that the equality intended by Congress has been preserved.

IV.

THIS COMPETING MONEYED CAPITAL WAS ASSESSED UNDER THE MINNESOTA STATUTES EITHER AT A RATE MUCH LOWER THAN THAT PRESCRIBED FOR SHARES IN NATIONAL BANKS OR LEFT ENTIRELY UNTAXED.

We will discuss state banks and trust companies under

separate headings, but here, at the risk of repetition, again call attention to the Minnesota taxing statutes applicable to the forms of moneyed capital we have thus far considered.

(a)

Money and Credits, 3 mills. Ch. 285, Laws 1911, Sec. 2316 Gen. St. 1913. (Appendix D).

(b)

Mortgages on real estate and executory contracts for the sale of real estate, $1\frac{1}{2}$ to $2\frac{1}{2}$ mills registry tax which covers the entire period for which the credit is extended (Appendices B and C).

(c)

Corporate stock, except national bank shares, was untaxed unless its market value exceeded the value of its taxable property.

Sec. 838, Revised Laws 1905, Sec. 2015, Gen. St. 1913. (Appendix G).

State vs. Duluth Gas & Water Co., 76 Minn. 96.

State vs. St. Paul Trust Co., 76 Minn. 423.

It is possible that the stock of some corporation having a large earning power, would have a value exceeding that of its physical property and that in such case the excess would be listed under "bonds and stocks," but no financial or investment corporation could be in that condition, and their capital stock therefore which would constitute moneyed capital within the meaning of Sec. 5219 was entirely untaxed. In the event such excess was found, it would take the 3 mill rate.

(d)

As already said, Sec. 839, Rev. Laws 1905, Sec. 2016, Gen. St. 1913 (Appendix H) provided a method for taxing the property of private banks and stock brokers and as that section has never been directly repealed, it should be referred to here.

By this statute private bankers and stock brokers were required to list :

1. The amount of money on hand or in transit.
2. The amount of funds in the hands of other banks, brokers, or others subject to draft.
3. The amount of checks or cash items not included in either of the preceding items.
4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.
5. The amount of bonds and stock of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.
6. All other property appertaining to said business other than real estate, which shall be listed and assessed as other real estate under this chapter.
7. The amount of all deposits made with them by other persons.
8. The amount of all accounts payable, other than current deposit accounts.

The aggregate of items 7 and 8 were to be deducted from the aggregate of items 1, 2, 3 and 4, and the remainder, if any, listed as "money"; item 5 to be listed as "bonds and stocks" and the property going to make up item 6 to be listed as other property of like character.

Items 1, 2, 3 and 4 are assets and within the definition of money and credits, items 7 and 8 are debts which, if deducted from credits, would under the present law leave a balance to be taxed at the 3 mill rate only. Item 5, bonds and stocks, would also take the 3 mill rate. Three mills, therefore, on the aggregate of items one to five inclusive, without any deduction, would produce a larger return than could be secured by following the method provided by section 839, Rev. Laws 1905, and taxing the residue at 3 mills.

It was because of this situation, we presume, the Tax

Commission directed the money and credits of such persons and companies to be directly taxed under the money and credits law of 1911, and section 389, we understand, has been considered repealed (notes in Tax Manual 1921, Petitioner's Ex. 2, R., p. 381 and Tax Manual 1922, Petitioner's Ex. 3, R., p. 389).

State vs. Tax Commission, 117 Minn. 159.

Such repeal is immaterial in these actions as the discrimination against bank shares exists under either construction.

Evansville Natl. Bank vs. Britton, 105 U. S. 322.

These statutes render the tax attempted to be levied upon shares in national banks invalid under all the decisions.

People vs. Weaver, 100 U. S. 539.

Boyer vs. Boyer, 113, U. S. 689.

Evansville National Bank vs. Britton, 105 U. S. 322.

Mercantile National Bank vs. New York, 121 U. S. 138.

Aberdeen Bank vs. Chehalis County, 166 U. S. 440.

Merchants National Bank of Richmond vs. City of Richmond, 256 U. S. 635.

First National Bank of Guthrie Center vs. Anderson, 269 U. S. 341.

Eddy vs. First National Bank of Fargo, 275 Fed. 550.

People vs. Goldfogle, 234 N. Y. 345.

State vs. Wallace, 187 N. W. (N. D.) 728.

First National Bank of Watertown vs. Eddy (S. D.,) 197 N. W. 290.

V.

THE FACTS FOUND BY THE SUPREME COURT OF MINNESOTA ARE FULLY SUPPORTED BY THE EVIDENCE.

As we have already pointed out the Supreme Court of

Minnesota carefully considered the evidence which appeared in the record and its effect under the decisions of this Court and finally summed up its conclusions as follows (R., p. 323) :

“The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce.”

The Supreme Court, found as a fact, the existence in the hands of individual citizens of competing moneyed capital (R., p. 323), exclusive of mortgages (R., p. 321) but including “shares of stock held by individuals in corporations, the business of which is the making of profit by using their capital as money” (R., p. 314) “and too large in amount to be overlooked or disregarded.” (R., p. 323).

Counsel for petitioner argued when applying for the Writ of Certiorari, that the Supreme Court of Minnesota did not find the fact of competition upon the evidence produced at the trial, but either assumed competition from the character of the securities themselves or erroneously interpreted the decisions of this court as so holding.

This argument ignores the ultimate facts found by the Court and upon which its conclusions were actually based.

Whether or not competition exists is a question of fact to be determined as any other dispute from the evidence, including the character of the securities, statements and opinions of witnesses competent to testify, and every other circumstance proper to be considered in arriving at a conclusion of fact.

The language used by the Supreme Court found on page 316 of the Record, was in answer to petitioner's claim

"That the record does not require a finding that the funds invested in these credits come into competition with national banks within the meaning of Section 5219."

In answering this claim, the court said (R., 316):

"Surplus funds are moneyed capital; and the Federal courts, if we understand their decisions correctly, have repeatedly held that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities whether as permanent personal investments or for temporary purposes, brings them in competition with national banks within the meaning of Section 5219, as it stood prior to the amendment of 1923."

That statement must be read in connection with the entire opinion and particularly in connection with the language we have first quoted as embodying the final conclusions of the Court (R., p. 323), and is in entire harmony with *First National Bank of Richmond vs. City of Richmond*, *supra*, as that decision has been generally understood and interpreted.

Eddy vs. First National Bank, 275 Fed. 550.

State vs. Wallace, 187 N. W. (N. D.) 728.

State Bank of Omaha vs. Endres, (Neb.) 192 N. W. 322.

Central National Bank vs. Sutherland (Neb.) 202 N. W. 428.

First National Bank of Watertown vs. Eddy, 197 N. W. (S. D.) 290.

It is, we submit, entirely in accord with the decision in *First National Bank of Guthrie Center vs. Anderson*, *supra*, where Mr. Justice Van Devanter summarizing and grouping prior decisions said (p. 348):

"3. Moneyed capital it brought into such competition where it is invested in shares of state banks or in private banking and also where it is employed substantially as in the loan and investment features of banking, in making investments by way of loan discount or

otherwise in notes, bonds or other securities, with a view to sale or repayment and reinvestment."

However, the respondent did not rest upon the claim that such securities representing the investment of moneyed capital by individuals, *per se*, established competition, nor did it rest its case upon the mere existence of such investments. Upon the contrary it presented expert evidence both upon the question of competition and upon the existence of other and additional forms of moneyed capital.

All of this evidence was considered by the Supreme Court, and its final conclusion was based not upon the mere existence of such investments but upon the testimony "of several witnesses * * *" and "the undisputed and unquestioned facts * * *" (R., 332-3).

It will be noted, the Supreme Court of Minnesota took into consideration "shares of stock held by individuals in corporations, the business of which is the making of profit by using their capital as money." * * * (R., p. 314), and had the decision of this court in the case of *First National Bank of Guthrie Center vs. Anderson, supra*, been previously made it would have included the huge sums represented by mortgages upon real estate. So, that in considering the support found in the record to the direct conclusion of the court, such shares of stock and mortgages must be given due weight, although neither were included in the moneyed capital reported as "money" and "credits" and taxed at the 3 mill rate, since, as we have already pointed out, moneyed capital represented by shares of stock was entirely untaxed and that represented by mortgages paying only a registry tax, which was much less than 3 mills.

The capital stock of trust companies and other financial or investment companies, amounting to more than thirteen million was shown to exist. This stock, ignoring for the

present shares of trust companies receiving deposits, was entirely untaxed and a large portion of it was, as we have already pointed out, shown to be held by individual citizens of the State. This form of moneyed capital must be conceded to have been invested in a business which came into direct competition with the business of national banks and was sufficient in amount to be material.

We have already pointed out the amount of moneyed capital invested in mortgages. The only tax imposed was the registry tax, namely, $1\frac{1}{2}$ mills where the loan was payable in five years or less, and $2\frac{1}{2}$ mills when payable after five years. The registry fee, or tax upon mortgages, is a general tax, the condition as to registry being merely the means devised for collecting it.

Federal Land Bank of New Orleans vs. Crossland 261 U. S. 374.

Many of such loans were by individual citizens and many others by corporations and investment companies. The Supreme Court of Minnesota, in the absence of a decision of this court, refused to include these investments as competing moneyed capital. Since the decision of this court in the case of *First National Bank of Guthrie Center vs. Anderson, supra*, we can see no escape from the conclusion that such loans when made by individuals constitute competing moneyed capital within the meaning of the Act of Congress, and such loans, where made by corporations, render the investments of individual citizens in the capital stock of such corporations also competing moneyed capital.

While we feel that the existence of these loans is of the utmost importance in these actions, and we desire as earnestly as possible to press our claim in that respect upon the attention of this court, we think that any further discussion by us should be omitted, because of the unavoidable length of this brief.

While all these forms of moneyed capital should have been taken into account in considering the sufficiency of the evidence to support the finding of competition, the Supreme Court of Minnesota omitted mortgages and did not pass upon our claim as to the effect of taxing trust companies upon gross earnings. It did, however, include as moneyed capital to be considered shares of stock in financial corporations. (R., p. 314).

It analyzed the character of the moneyed capital amounting to four hundred twenty-five million dollars, called "money" and "credits" under the Minnesota statutes and taxed at the 3 mill rate, and determined that much of it represented investments of moneyed capital, which this court had said normally entered into the business of banking. It is merely juggling with words to argue whether the Supreme Court of Minnesota said the character of this moneyed capital was such that it *might* come into competition or *did* come into competition with national banks. The truth is, that under all the decisions, it at least is moneyed capital which may come into competition with national banks, as distinguished from moneyed capital such as investments in manufacturing and mercantile companies which this court has held cannot come into such competition.

Having thus correctly classified this moneyed capital, the Supreme Court of Minnesota proceeded to analyze and discuss the evidence offered upon the trial with reference to competition, and found it to be uncontradicted in its entirety, although one witness doubted that competition existed between all the items, and having thus ascertained correctly the character of the moneyed capital, and finding that the evidence was overwhelming that actual com-

petition existed, the Supreme Court announced its ultimate conclusion.

On page thirty-eight of the brief with the petition for the Writ of Certiorari it is *admitted that some of the moneyed capital shown to have been taxed at the 3 mill rate might have been competitive*, but it is said "they were not shown in this case to be competitive and the Supreme Court's ruling, overturning the trial court's finding that there was no material competition, was based wholly upon its theory that they are under all circumstances competitive, in which ruling we submit, it misapplied this court's decisions."

We submit that statement by counsel for petitioner was an inadvertant but palpable misinterpretation of the conclusions of the Supreme Court of Minnesota. It is contradicted by the entire record, including the testimony of the witness called by petitioner. It not only ignores the entire opinion of the Supreme Court of Minnesota, but is in direct conflict with that Court's statement of its position. This fact seems so important we again quote from the opinion (R., p. 322, 3):

"Several witnesses called by defendant testified that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. The only witness called by plaintiff testified briefly that in his opinion there would be some competition in some of the items among which he included book accounts, but that there would be little or no competition in other items as they did not represent a class of loans or credits in which the banks were dealing.

"The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disre-

garded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce." (*Italics ours*).

VI.

THE FINDINGS OF FACT BY THE MINNESOTA
COURT ARE CONCLUSIVE.

The first appeal to the Supreme Court of Minnesota resulted in a direction for a new trial and the actions went back to the District Court for trial *de novo*.

Buckus vs. Burke, 52 Minn. 109.

It was the privilege of either party to introduce the same or additional evidence. The course followed here was to resubmit the actions upon the record already made (R., p. 325, 326), and thereupon the trial court found money and credits for 1921 to have been for entire state \$422,745,-839. Ramsey County alone \$83,965,268. And in 1922, State \$400,688,948; Ramsey County \$87,796,840; which were "exempted from taxation other than 3 mills of the fair value thereof*****." (Finding 7, R., p. 332).

The eighth finding was as follows (R., p. 333) :

"That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County, consisted of moneyed capital in the hands of individual citizens of said County coming into competition with the business of national banks in said County, and with the business of said defendant."

This was a general finding of the ultimate and controlling facts and sufficient to support judgment.

Hewitt vs. Blumenkranz, 33 Minn. 417.

Hurley vs. The Mississippi & Rum River Boom Co., 34 Minn. 143.

Combination Steel and Iron Co. vs. St. Paul

City Ry. Co., 52 Minn. 203.

Cummings vs. Rogers, 36 Minn. 317.

Brown vs. Roberts, 90 Minn. 314.

It was a finding of facts which could have been attacked while the actions were in the Minnesota courts by one of the following methods:

If the finding was considered indefinite or based upon an assumption of competition arising solely from the character of the securities that situation could have been developed by a motion to amend, or for additional findings.

The rule in Minnesota is thus given in *Hewitt vs. Blumenkranz*, *supra*, (p. 417):

"If the finding was not sufficiently specific, the trial court should have been moved to make it so; otherwise the objection is waived."

No such motion was made, but an appeal was taken from the judgment. Upon this appeal the sufficiency of the evidence to support the facts as found could have been presented and the affirmance which followed the appeal necessarily includes an affirmance of the findings.

The eighth finding, therefore, appearing at page 333 and above quoted, will here be taken as conclusive.

Hedrick vs. Atchison, T. & S. F. R. Co., 167 U. S. 673, 677.

Chapman & D. Land Co. vs. Bigelow, 206 U. S. 41, 45.

Crisman vs. Miller, 197 U. S. 313-319.

In the last case above cited this court said at p. 319:

"We do not review questions of fact, but accept the conclusions of the state tribunal as final."

We feel this situation was not sufficiently developed upon the application here for the Writ of Certiorari and that the suit should now be dismissed under the rule announced in

Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508.

where this Court said at page 509:

"This writ must be dismissed. The petition therefor stated that the cause involved a grave question of vital importance to the public, and alleged as a special reason for its re-examination that the decree would deprive petitioner of property without due process of law and of freedom to contract, contrary to the Federal Constitution.

"The argument developed that the controverted question was, whether the evidence sufficed to establish actual dedication of petitioner's property to public use—primarily a question of fact. That is not the ground upon which we granted the petition and if sufficiently developed would not have moved us thereto."

And without reference to the merits of the case, the Writ was dismissed.

VII.

CHAPTER 529, LAWS 1913 (APPENDIX E). TAXING TRUST COMPANIES UPON GROSS EARNINGS CREATED DISCRIMINATION.

While the amount of moneyed capital invested in shares of trust companies not receiving deposits, \$2,135,000 (Respondent's Ex. J) is not large in itself, the statute (Appendix E) providing for a gross earnings tax upon those companies, creates discrimination.

People vs. Goldfogle, 234 N. Y. 345.

The difference in the rate is very material, as shown by Respondent's Exhibit J.

The illustration there given shows the tax upon the trust company to be at a rate only a little more than one-half that imposed upon national bank shares.

The shares in the trust company are entirely untaxed.

VIII.

CHAPTER 416, LAWS 1921, CREATES DISCRIMINATION BETWEEN STATE AND NATIONAL BANKS.

Chapter 416 (Appendix A) provided the method for taxing the *shares* of national banks and the *moneyed capital* of banks organized under the laws of Minnesota. This included trust companies receiving deposits (Respt's Ex. C). (R., p. 350).

Section 1 of the Act reads:

"The *shares* of stock of every bank in this State organized under the laws of the United States, and the *moneyed capital* of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located." (Our italics).

Section 2 provides:

"The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and the taxes levied thereon shall be paid by such bank as agent of the stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this State shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company."

Section 3 provides for ascertaining the value of the shares of national banks and the value of the moneyed capital of the state banks in an identical manner.

This Chapter 416 was a repeal of Sections 2017 and 2020, General Statutes 1913 which provided (Section 2017):

"The stockholders of every bank or mortgage loan company in this State organized under the laws of the State or of the United States shall be assessed and

taxed on the value of their shares of stock therein" etc. The method of ascertaining the value of the shares was substantially the same as provided by Chapter 416, Laws 1921.

Inasmuch as these taxes had always been nominally, under Sections 2017 and 2020, assessed against the banks, and as no reference to the Act of 1921 appeared in the tax manuals issued by the State Tax Commission (Petitioner's Exs. 2 and 3, R., pp. 375 and 389), the change in the law apparently went unnoticed by the banks, and state banks took no advantage of the opportunity, which they in fact had, of deducting from their assets tax-exempt securities. (Bacon, R., 260).

At the time of the assessment of these taxes state banks held in 1921 United States bonds amounting to \$13,369,840.00, and in 1922, \$10,004,241.00 (Respt. Ex. C and D), and respondent held in 1921 United States bonds amounting to \$3,453,665.00, and in 1922, \$11,343,234.00 (Respt's Ex. C and D).

Securities of the United States are immune from taxation. A state statute placing a tax upon such securities is void. This rests upon the principle that the power to borrow money on the credit of the government might be impaired if the state had the right to tax such securities and this exemption was confirmed by Act of Congress of February 28, 1862, 12 Statutes at Large, 346, which provides that

"All stocks, bonds and other securities of the United States held by individuals, corporations or associations within the United States, shall be exempt from taxation by or under state authority."

Home Savings Bank vs. Des Moines, 205 U. S., 503, 513.

Equality of taxation must be preserved between national and state banks. It is obvious that an unjust discrimination in favor of state banks results if these securi-

ties are included in the taxation of national banks and excluded in the taxation of state banks.

Van Allen vs. The Assessors, 3 Wall. 573.

McCullough vs. Maryland, 4 Wheat., 315.

People vs. Commissioners, 4 Wall. 244.

Boyer vs. Boyer, 113 U. S. 689.

Owensboro National Bank vs. Owensboro, 173 U. S. 664.

Home Savings Bank vs. Des Moines, 205 U. S. 503.

Des Moines National Bank vs. Fairweather, 263 U. S. 103.

In *Van Allen vs. The Assessors*, *supra*, it was held (p. 583) :

“The tax on the shares is not a tax on the capital of the bank,” and that this interest (the shares) is the only interest which Congress has permitted the states to tax.

The New York statute in that case provided for a tax on the shares of national banks not exceeding the par value of such shares while state banks were taxed upon their capital. This court held that the tax was void because the capital of the state banks might consist of bonds of the United States, which are exempt from state taxation, and, for that reason, the tax on the capital of the state bank was not equivalent to a tax on the shares of the stockholders.

The Court at page 581 said :

“The defect is this: One of the limitations in the Act of Congress is, ‘that the tax so imposed under the laws of any State upon the shares of the associations authorized by this act, shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located.’ The enabling act of the State contains no such limitation. The banks of the State are taxed upon their capital; and although the act provides that the tax on the shares of the national banks shall not exceed the par value, yet, inasmuch as the capital of the State

banks may consist of the bonds of the United States, which are exempt from State taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

Whether a state statute commands an assessment on the property of the bank rather than the shares, contrary to Section 5219, is a proper question for decision by this Court.

Home Savings Bank vs. Des Moines, supra.

Des Moines Bank vs. Fairweather, supra.

The Minnesota Statute (Chapter 416, Laws 1921) expressly lays the tax on the shares of national banks and on the moneyed capital of state banks.

The "shares" of national banks are assessed "against the holders thereof," and the tax is paid by the bank, "as the agent of the stockholders," while "the moneyed capital" of the state bank is assessed and taxed "against such bank" and the tax "paid by such bank."

A similar statute was before this Court in *Home Savings Bank vs. Des Moines, supra*, p. 508.

The Iowa Statute provided that (p. 508):

"Shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies and not to individual stockholders,"

and the method of assessing and collecting the tax was substantially the same as the Minnesota Statute.

The Court said, at page 511:

"The fair interpretation of the law is that the taxes are upon the property of the banks. In the valuation for taxation the assessor is required to 'take into account the capital, surplus and undivided earnings,' must be furnished with a 'verified statement of all matters provided by the preceding section,' which by reference is seen to be a detailed statement showing the assets of the bank."

At page 519:

"Without further review of the authorities it is safe to say that the distinction established in the Van Allen case has always been observed by this court, and that, although taxes by States have been permitted which might indirectly affect United States securities, they have never been permitted in any case except where the taxation has been levied upon property which is entirely distinct and independent from these securities. On the other hand, whenever, as in these cases, the tax has been upon the property of the corporation, so far as that property has consisted of such securities, it has been held void.

"One other consideration only needs to be noticed. It is said that where a tax is levied upon a corporation measured by the value of the shares in it, it is equivalent in its effect to a tax (clearly valid) upon the shareholders in respect of their shares, because, being paid by the bank, the burden falls eventually upon the shareholders in proportion to their holdings. It was upon this view that the lower court rested its opinion. But the two kinds of taxes are not equivalent in law, because the State has the power to levy one and has not the power to levy the other. The question here is one of power and not of economics. If the State has not the power to levy this tax, we will not inquire whether another tax which it might lawfully impose would have the same ultimate incidence."

A recent case upon this phase of these actions is *Des Moines National Bank vs. Fairweather*, *supra*.

In that case the question was whether or not the law of Iowa, under which an *individual taxpayer might omit his governmental securities, when listing his money and credits for taxation*, resulted in discrimination against national bank shares, the value of which was determined by including governmental securities. In holding no unlawful discrimination resulted, the Court said, page 116:

"Our concern here is not with a voluntary refusal or intentional omission on the part of the state to tax other moneyed capital of citizens as it taxes national

bank shares, but with a submission by the state to superior laws of the United States exempting a part of the other moneyed capital from state taxation."

The state had, this court found, preserved equality as far as it was within its power to do so, but here the state repealed the law which established *equality* of taxation upon national and state bank shares and substituted one which allowed, if it did not actually compel, *inequality*.

The method of taxation provided by Chapter 416 of the Laws of 1921 prevented the owners of national bank shares from deducting the value of the federal securities held by the bank and resulted in giving the state banks that privilege. This was an "intentional omission" on the part of the state, and the discrimination existed, not because of the immunity granted by Congress, but because the state, with power to treat both kinds of shares alike, as it had done for many years, subjected national bank shareholders to a burden which was not shared by those in state banks. But whatever may be said as to the discrimination resulting from the deduction of governmental securities, the discrimination seems entirely clear when it is remembered that under these different systems a state bank could not only omit, or deduct, securities of the United States Government, but all tax-exempt securities.

It may be questionable whether under Section 3, Chapter 328, Revised Laws of 1907, (Appendix B), mortgages could have been also deducted but certainly tax-exempt municipals could have been.

We have not, therefore, a case of "submission by the state to superior laws of the United States," but one in which the State creates a discrimination exclusively by its own laws.

The deduction thus allowed state banks was from the net balance.

People ex rel vs. Barker, 154 N. Y. 128; 47 N. E. 973.

That this discrimination is material is shown by the following table:

TABLE GIVING COMPARISON OF TAX ON NATIONAL BANK SHARES AND ON STATE
BANKS IF IMPOSED UNDER CHAPTER 416, LAWS 1921

Value National Bank Shares Less Real Estate and Moneyed Capital of State Banks Less Real Estate.	40%	U. S. Bonds	Other Bonds and Securities	Total Amount for Taxation
National Banks				
Ex. M.....	\$60,671,000.00	\$24,268,000.00	\$41,190,000.00	\$33,894,000.00
State Banks and Trust Com- panies Receiv- ing Deposits,				
Ex. C.....	\$43,681,688.00	\$17,472,675.20	\$13,866,927.91	\$70,372,789.16*
				\$ 3,605,747.29

* Assumed to include mortgages.

The amount of real estate mortgages held by state banks
was not separately shown but it seems certain such holdings
were very large.

Chapter 416 is invalid on its face because it attempts to impose a tax beyond the authority granted by Congress.

The fact that the taxing authorities did not allow to state banks a deduction on account of their holdings of government securities, did not deprive the respondent from asserting the invalidity of the Statute. There cannot be a valid tax under an invalid law.

In *Louisville & Nash. R. R. Co. vs. Stock Yards Co.*, 212 U. S. 132, it was said (p. 144) :

"The law itself must save the parties rights, and not leave them to the discretion of the courts as such."

And in *Security Trust Co. vs. Lexington*, 203 U. S. 323, the Court said with respect to an assessment for back taxes (p. 333) :

"If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by statute."

A decision which seems to us decisive that our claim as to the effect of Chapter 416 (Appendix A) is sound, is that in

Owensboro Natl. Bank vs. Owensboro, supra.

Where this Court, through Mr. Chief Justice White, said there must be "equivalency in law and equivalency in fact."

We quote as follows from that case (p. 676) :

"It is, however, urged that whilst the taxes may not be in form imposed on the shares of stock in the names of the shareholders, and may be in form a tax on the franchise or property of the bank, nevertheless they are equivalent to a tax on the shares of stock in the names of the shareholders, and therefore do not violate the act of Congress. But this proposition concedes that the taxing statute does not conform to the act of Con-

gress, and yet invokes its permissive authority, since, as already shown, without the grant made by the act of Congress there would be no power to tax at all. Passing, nevertheless, this contradiction, and looking beneath the mere form, we come to the substance of things. The alleged equivalency, in order to be of any cogency, must of necessity contain two distinct and essential elements—equivalency in law and equivalency in fact. Does it contain either? is the question.

"To be equivalent in law, involves the proposition that a tax on the franchise and property of a bank or corporation is the equivalent of a tax on the shares of stock in the names of the shareholders. But this proposition has been frequently denied by this court, as to national banks, and has been overruled to such an extent in many other cases relating to exemptions from taxation, or to the power of the States to tax, that to maintain it now would have the effect to annihilate the authority to tax in a multitude of cases, and as to vast sums of property upon which the taxing power is exerted in virtue of the decisions of this court holding that a tax on a corporation or its property is not the legal equivalent of a tax on the stock, in the names of the stockholders.* * *

Page 683:

"Whilst this conclusion suffices to dispose of the case, we advert to the contention that although there may not be a legal equivalency, there is nevertheless one in fact, and therefore the tax should be sustained. It may be that in the case before us, there is a coincidence between the sum of the tax levied upon the corporation and the amount which would have been imposed had the shares of stock in the names of the shareholders been assessed according to the act of Congress. But that this is not the necessary result of the taxing statute is too plain to require comment.* * * If the mere coincidence of the sum of the taxation is to be allowed to frustrate the provisions of the act of Congress, then that act becomes meaningless and the power to enforce it in any given case will not exist. This fol-

lows since if mere coincidence of amount and not legal power be the test, only a pure question of fact would arise in any given case. The argument that public policy exacts that where there is an equality in amount between an unlawful tax and a lawful one, the unlawful tax should be held valid, does not strike us as worthy of serious consideration."

The Supreme Court of Minnesota did not agree with us as to the legal effect of the Statute and said (p. 321, 322) :

"Defendant also insists that, although chapter 416 provides the same method for determining the value of the shares of national banks and the value of the money capital of State Banks, it discriminates in favor of State Banks. This claim is based on the fact that in the case of State Banks, the tax is against the bank, not against the shareholders, and the bank is permitted to deduct its tax exempt securities from the value of its property in fixing the amount subject to taxation, while in the case of national banks the tax is against the shareholders, not against the bank, and tax-exempt securities are not deducted in fixing the value of such shares. We think that the method adopted is permissible under the doctrine of *People vs. Commissioners of Taxes*, 71 U. S. (4 Wall) 244, 18 L. Ed., 344; *Mercantile Nat. Bank vs. Mayor, etc.*, 121 U. S., 138, 30 L. Ed., 895; and *Des Moines Nat. Bank vs. Fairweather*, 263 U. S. 103, 68 L. Ed., 191."

It is submitted that the judgment should be affirmed if for no other reason than that this plain discrimination between shares of state and national banks rendered the statute invalid.

CONCLUSION

We are not competent, nor would we presume, to compare these actions with any other undecided case now before this Court. We feel, however, that the situation in Minnesota, caused, as we have shown, by a mass of unre-

lated and hodge-podge statutes enacted at various times since 1906, is unique, and that under any, and all, of the decisions the judgment here must be affirmed.

The situation is unique because the laws of Minnesota seem to produce and result in every form of discrimination against national banks which has ever been condemned.

We regret the length of this brief, but have felt that because of the issuance of the Writ of Cretiorari proper respect for this court required from us as complete an analysis of the facts and of the statutes of Minnesota as it was within our ability to present.

It is respectfully submitted the Writ should be dismissed, or in any event the judgment should be affirmed.

THOMAS D. O'BRIEN,

ALEXANDER E. HORN,

EDWARD S. STRINGER,

Counsel for Respondents,

St. Paul, Minnesota.

I

APPENDIX A

Chapter 416, Laws of 1921.

An act providing for the assessment and taxation of the shares of stock of banks organized under the laws of the United States and the moneyed capital of banks and mortgage loan companies organized under the laws of this State, and repealing Sections 2017 and 2020, General Statutes of 1913, and other acts inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. ASSESSMENT OF BANK STOCK.—The shares of stock of every bank in this State organized under the laws of the United States and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located.

Sec. 2. ASSESSED AND TAXED AGAINST HOLDERS OF RECORD IN NAME OF BANK—TAX PAID BY BANK.—The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and the taxes levied thereon shall be paid by such bank as agent of the stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this State shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company.

Sec. 3. OFFICERS TO MAKE STATEMENT FOR ASSESSORS.—To aid the assessor in determining the value of the shares of stock of national banks and the value of

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the moneyed capital of state banks and mortgage loan companies, the cashier or other accounting officer of every such bank or mortgage loan company shall furnish a sworn statement to the assessor, showing the amount and number of shares of the capital stock, the amount of its surplus, undivided profits and all other funds, and the amount of its legally authorized investments in real estate located in this State, which real estate shall be assessed and taxed in the same manner as other real estate. The assessor shall deduct the amount of such legally authorized investments in real estate from the aggregate amount of such capital, surplus, undivided profits, and other funds, and the remainder shall be taken as a basis for determining the taxable value of the shares of stock of banks organized under the laws of the United States and of the moneyed capital of banks and mortgage loan companies organized under the laws of this State.

Sec. 4. TAX DEDUCTED FROM DIVIDENDS.—To secure the payment of taxes levied against the stockholders of banks organized under the laws of the United States every such bank shall, before declaring any dividend, deduct from the annual earnings of the bank such amount as may be necessary to pay any such taxes so levied against such stockholders, and such bank or the officers thereof shall pay the taxes and shall be authorized to charge the amount thereof to the expense account of such bank.

Sec. 5.—INCONSISTENT ACTS REPEALED.—Sections 2017 and 2020, General Statutes of 1913, and all other acts or parts of acts, in so far as they are inconsistent herewith, are hereby repealed. But such repeal shall not affect the validity of any taxes levied or assessed by virtue of said sections and all such taxes shall be paid and proceedings for payment taken according to the provisions of said

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sections and other laws in force at the time of the assessment and levy thereof.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved April 21, 1921.

IV

APPENDIX B

Chapter 328, Laws 1907.

CHAPTER 328—H. F. No. 561.

An Act to provide for the taxation of mortgages of real property.

Be it enacted by the Legislature of the State of Minnesota:

MORTGAGE DEFINED.—Section 1. The words "real property," "real estate" and "land," as used in this act, in addition to the definitions thereof contained in the Revised Laws of 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words "mortgage," as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum.

REGISTRY TAX 50 CENTS FOR \$100.—Sec. 2. A tax of fifty cents is hereby imposed upon each hundred dollars, or major fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured

by any mortgage of real property situate within the state which mortgage is recorded or registered on or after April 30, 1907, provided, that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee.

IN LIEU OF ALL OTHER TAXES.—Sec. 3. All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes.

MORTGAGES IN TRUST.—Sec. 4. If a mortgage is made to a mortgagee in trust, to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount of such obligations already issued or to be issued forthwith, and the tax to be paid on filing such mortgage for record or registration shall be computed upon the amount so stated. Such statement shall be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed shall be valid for any purpose unless the additional tax

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thereon be paid and the receipt of the proper county treasurer therefor be endorsed thereon.

REGISTRY TAX—HOW PAID.—Sec. 5. The tax imposed by this act shall be paid to the treasurer of the county in which the mortgaged land or some part thereof is situated, at or before the time of filing the mortgage for record or registration. The treasurer shall endorse his receipt on the mortgage, countersigned by the county auditor, who shall charge the amount to the treasurer, and such receipt shall be recorded with the mortgage, and such receipt of the record thereof shall be conclusive proof that the tax has been paid to the amount therein stated, and shall authorize any register of deeds to record the mortgage. Its form in substance shall be "registration tax hereon of.....
.....dollars paid." If the mortgages be exempt from taxation the endorsement shall be "exempt from registration tax," to be signed in either case by the treasurer as such, and in case of payment to be countersigned by the auditor. In case the treasurer shall be unable to determine whether a claim of exemption should be allowed the tax shall be paid to the clerk of the district court of the county to abide the order of such court made upon motion of the county attorney, or of the claimant upon notice as required by the court. When any such mortgage covers real property situate in more than one county in this state the whole of such tax shall be paid to the county treasurer of the county where the mortgage is first presented for record or registration, and the payment shall be receipted and countersigned as above provided, and such tax shall be divided and paid over by the county treasurer receiving the same on or before the tenth day of each month after receipt thereof to the county or counties entitled thereto in the ratio which the assessed value of the real property covered by the mortgage in each county bears to

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the assessed value of all the property described in the mortgage. In making such division and payment the county treasurer shall send therewith a statement giving the description of the property described in the mortgage and the assessed value of the part thereof situate in each county. And for the purpose aforesaid the county treasurer of any county may require the county treasurer of any other county to certify to him the assessed valuation of any tract of land in any such mortgage.

PAID TO STATE TREASURER UNDER CERTAIN CONDITIONS.—Sec. 6. When any real estate situate in this state and described in any such mortgage is not taxed by direct tax upon the assessed valuation thereof, then the tax herein provided shall be paid to the state treasurer and credited to the general revenue fund. The receipt thereof shall be endorsed upon the mortgage by the state treasurer and countersigned by the state auditor, who shall charge the treasurer therewith, and thereupon such mortgage shall be recorded or registered, as to such real estate in any office in this state, and thereupon such mortgage may be recorded or registered, but as to all real property described in any mortgage taxed upon an assessed valuation the registry tax shall be paid as provided in section 5 hereof.

NOT RECORDED UNTIL TAX IS PAID.—Sec. 7. No such mortgage, no papers relating to its foreclosure, nor any assignment or satisfaction thereof shall be recorded or registered after April 30, 1907, unless said tax shall have been paid; nor shall any such document, or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise.

MORTGAGES — PROVISION.—Sec. 8. All mortgages of real estate recorded or registered prior to April 30th, 1907, shall be taxable as provided by law under the

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provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county or the state treasurer, or both, the tax herein prescribed upon the amount of the debt secured by such mortgage at the time of such payment, as stated by the affidavit of the owner of such mortgage, to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

TAX—HOW DISTRIBUTED.—Sec. 9. All taxes paid to the county treasurer under the provisions of this act shall be apportioned and distributed in the same manner as real estate taxes paid upon the real estate described in the mortgage.

Sec. 10. This act shall take effect and be in force from and after April 30th, 1907.

Approved April 23, 1907.

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APPENDIX C

Chapter 163, Laws of 1913.

An Act to amend Sections Two (2), Seven (7) and Eight (8) of Chapter Three Hundred Twenty-eight (328) of the Laws of 1907, entitled "An Act to provide for the taxation of mortgages of real property."

Be it enacted by the Legislature of the State of Minnesota:

Section 1. REGISTRY TAX OF 15 CENTS PER \$100 WHERE MORTGAGE RUNS FOR FIVE YEARS OR LESS, and 25 CENTS FOR MORE THAN FIVE YEARS.—Section two of Chapter three hundred twenty-eight (328) of the Laws of 1907 is hereby amended to read as follows:

Section 2. A tax of fifteen cents is hereby imposed upon each hundred dollars, or fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state executed and delivered after the passage and approval hereof and recorded or registered hereafter; provided that any such mortgage heretofore executed and delivered shall not be recorded or registered without payment of the tax originally stipulated in Section two (2) hereof as originally enacted; provided further that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee; and provided further that if the maturity of the said debt secured by the said mortgage, as therein stipulated, shall be fixed at a date more than five years after the date of said mortgage, then and in that case,

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the tax to be paid thereon shall be at the rate of twenty-five cents on each hundred dollars or fraction thereof.

Sec. 2. EFFECT IMMEDIATELY.—Section seven (7) of Chapter three hundred twenty-eight (328) is hereby amended to read as follows:

Section 7. No such mortgage, no papers relating to its foreclosure nor any assignment or satisfaction thereof shall be recorded or registered after the passage of this act unless said tax shall have been paid; nor shall any such document or any record thereof, be received in evidence, in any court, or have any validity as notice or otherwise.

Sec. 3. PRIOR MORTGAGES MAY BE TAXED UNDER PRESENT ACT.—That Section eight (8) of Chapter three hundred twenty-eight (328) is hereby amended to read as follows:

Section 8. All mortgages of real estate recorded or registered prior to the passage of this act shall be taxable as provided by law under the provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county, or the state treasurer, or both the tax therein prescribed upon the amount of the debt secured by such mortgage at the time of such payment as stated by the affidavit of the owner of such mortgage to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved April 2, 1913.

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APPENDIX D

Section 1, Chapter 285, Laws 1911.

Section 2316, General Statutes 1913.

DEFINITION—TAX RATE—"Money" and "credits" as the same are defined in section 798 "Revised Laws of 1905" (1975) are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

But nothing in this act shall apply to money or credits belonging to incorporated bank situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907.

Section 798, Revised Laws 1905.

Section 1975, General Statutes 1913.

1. "Money" or "moneys" shall mean gold and silver coin, treasury notes, bank notes and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

(Balance of Section omitted as immaterial).

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APPENDIX E

Chapter 529, Laws of 1913.

An Act to provide for the taxation of trust companies.
Be it enacted by the Legislature of the State of Minnesota:

Section 1. FIVE PER CENT TAX ON GROSS EARNINGS OF TRUST COMPANIES.—On or before March 1 of each year every trust company organized under the laws of this state shall pay into the county treasury of the county where its principal place of business is located five (5) per cent of its gross earnings for the preceding calendar year, which amount shall be in lieu of all taxes and assessments upon the capital stock and the personal property of such trust company; provided, however, that if any such company shall receive deposits subject to check other than trust deposits, that then such company shall be assessed in the same manner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks.

Sec. 2. All taxes paid to county treasuries under the provisions of this act shall be apportioned and distributed in the same manner as the general property tax is apportioned and distributed.

Approved April 25, 1913.

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APPENDIX F

Chapter 483, Laws of 1913.

An Act to classify property for taxation purposes and to fix the per cent of "full and true value" at which property in each class shall be assessed.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **CLASSIFICATION OF REAL AND PERSONAL PROPERTY FOR TAXATION PURPOSES.**—All real and personal property subject to a **general property tax** and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as follows:

Class 1. Iron ore whether mined or unmined shall constitute class one (1) and shall be valued and assessed at fifty (50) per cent of its true and full value. If unmined it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three (3) and four (4) as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

Class 2. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two (2) and shall be valued and assessed at twenty-five (25) per cent of the full and true value thereof.

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Class 3. Live stock, poultry, all agricultural products, stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tools, implement and machinery whether fixtures or otherwise, and all unplatted real estate, except as provided by class one (1) hereof, shall constitute class three (3) and shall be valued and assessed at thirty-three and one-third ($33\frac{1}{3}$) per cent of the true and full value thereof.

Class 4. All property not included in the three preceding classes shall constitute class four (4) and shall be valued and assessed at forty (40) per cent of the full and true value thereof.

Sec. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after January 1st, 1914.

Approved April 24, 1913.

APPENDIX G

Section 838, Revised Laws 1905.

Section 2015, General Statutes 1913.

838. CORPORATIONS, COMPANIES, and ASSOCIATIONS GENERALLY—The President, Secretary, or principal accounting officer of every company and association, incorporated or unincorporated, except railroad, insurance, telegraph, telephone, express, freight line, and sleeping car companies, and banking corporations whose taxation is specifically provided for in this chapter, when listing personal property, shall also make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company or association.
2. The amount of capital stock authorized, and the number of shares into which it is divided.
3. The amount of capital stock paid up.
4. The market value, or, if they have no market value, then the actual value, of the shares of stock.
5. The value of its real property, if any.
6. The value of its personal property.
7. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The aggregate amount of the fifth and sixth items, shall be deducted from the total amount of the fourth item, and the remainder, if any, shall be listed as "bonds or stocks," under Sec. 835, subd. 23. The real and personal property of each company or association shall be listed and assessed the same as that of private persons. If the proper officer shall fail or refuse to make such statement, the assessor shall make such statement from the best information he can obtain. Mortgages of building associations, which are represented in their stock and assessed as stock, shall not be assessed as mortgages. They shall list their real estate and all personal property as provided in this section. (1530).

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APPENDIX H

Section 839, Revised Laws 1905.

Section 2016, General Statutes 1913.

839. PRIVATE BANKERS, BROKERS, and BANKS WITHOUT STOCK—The accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker, and stockjobber, when listing personal property, shall also make out and deliver to the assessor a sworn statement showing:

1. The amount of money on hand or in transit.
2. The amount of funds in the hands of other banks, brokers, or others subject to draft.
3. The amount of checks or cash items not included in either of the preceding items.
4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.
5. The amount of bonds and stock of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.
6. All other property appertaining to said business, other than real estate, which shall be listed and assessed as other real estate under this chapter.
7. The amount of all deposits made with them by other persons.
8. The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third and fourth items, and the remainder, if any, shall be listed as money, under Sec. 835, subd. 19. The

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amount of the fifth item shall be listed as bonds and stock under said section, and the sixth item shall be listed the same as other similar personal property is listed under this chapter, except, that, in case of savings banks organized under the general laws of this state, the amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, fourth, fifth and sixth items, and the remainder, if any, shall be listed as credits, according to the provisions of Sec. 835. (1531).

31543

Office Supreme Court, U.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1926

No. 245

STATE OF MINNESOTA,

Petitioner,

vs.

THE FIRST NATIONAL BANK OF SAINT PAUL,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT.

THOMAS D. O'BRIEN,
ALEXANDER E. HORN,
EDWARD S. STRINGER,
Counsel for Respondent,
St. Paul, Minnesota.

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31543

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SUPPLEMENTAL BRIEF OF RESPONDENT.

The brief for petitioner was received so late, we ask permission in respondent's behalf to file this supplementary brief.

I.

INSUFFICIENT ASSIGNMENT OF ERROR

The judgment here for review rests upon the findings of fact made in the trial court. (District Court, Ramsey County, Minnesota.) None of those findings are assigned as error by petitioner, but instead, the four assignments made refer exclusively to the opinion of the Supreme Court rendered upon the previous appeal.

A specification of error which refers only to statements in an opinion delivered by a court is not sufficient to present any question for review.

Smart vs. Wright, 227 Fed. 84.

Childs vs. Williams, 212 Fed. 151.

Mason vs. United States, 219 Fed. 547.

As pointed out in our main brief (pp. 52-54) the eighth finding of the District Court was a general finding of the ultimate and controlling facts and sufficient to support the judgment.

Hewitt vs. Blumenkranz, 33 Minn. 417.

It is now sought to avoid the effect of this finding by claiming it to have been based upon an erroneous conception of law and that so construed it will be reviewed by this Court.

The petitioner under the Minnesota practice had the right to develop that condition, if it existed, by asking for more specific findings in which the different forms of moneyed capital and the amounts of each would be shown, also the amount held to be material and how and why any such form came into competition, but having elected to rest upon a general finding of fact sufficient to support the legal conclusions and judgment, will not be permitted to extend the finding beyond the plain meaning of the language actually used.

We submit this is a matter of substance and goes far beyond a mere technical objection to insufficient assignments of error which we realize this Court might readily disregard in the interests of justice.

It is not sufficient to say the finding was a mere formality in accordance with the previous conclusions of the Supreme Court. When the actions went back for retrial they were before the court for trial *de novo*. The submission of the actions upon the evidence already taken to no extent interfered with the right of petitioner to move for specific or additional findings, in which those, if any, based upon legal

conclusions could have been set out and findings of fact separately stated.

But beyond this we insist counsel misinterpreted the decision of the Supreme Court of Minnesota, in claiming it to have been based entirely upon bonds and promissory notes and book accounts in the hands of individual citizens not engaged in banking or a similar business, and also in saying (p. 30):

“and involved in the finding” (8th) “is the theory of law that bonds, and possibly notes and book accounts, are per se moneyed capital coming into competition with national banks.”

The Supreme Court of Minnesota referred to some of the items listed as money and credits and then said (R. p. 316):

“Defendant contends that these items, *and also other items*, assessed as credits and aggregating large amounts, represent moneyed capital employed in competition with national banks.” (our italics)

The Court discussed petitioner’s claims as to bonds, investments of surplus funds, promissory notes and also the testimony as to other forms of moneyed capital, but nowhere confined its final conclusion to the specific items of bonds, promissory notes and book accounts—instead its conclusion was (R. p. 323):

“ * * * That moneyed capital in the hands of individual citizens, taxed at the 3-mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of Section 5219 as interpreted by the Supreme Court of the United States.”

In reply to the contention that the taxing statutes upon their face showed discrimination against national banks, the Court said (R. p. 316) :

“Although there is force in this contention, the present case does not rest upon it.”

In our main brief we endeavored to point out how far we went beyond a mere showing as to the moneyed capital returned under the money and credits act of 1911. But let it be assumed that such was our principal showing. If in fact the testimony went further, as we think must be conceded, it became important to know the extent to which other moneyed capital was shown, and which of the moneyed capital so shown was found by the court to be competitive and the amount of such competitive capital which the Court deemed material.

Counsel are not at liberty to play fast and loose—to rest without remonstrance upon a general finding and then attack it without having assigned it as erroneous, upon the claim that the *principal* evidence in the case was directed to some erroneous theory of law.

II.

THE MONEY AND CREDITS TAX IS NOT EQUIVALENT TO THE TAX UPON SHARES OF NATIONAL BANKS.

Counsel have persistently argued that Chapter 285, Laws 1911, Section 2316 General Statutes 1913 (Appendix D), imposed as great a tax upon money and credits in the hands of individual citizens as that imposed upon shares in national banks. This claim is based upon the fact that

in ascertaining the value of the shares the liabilities of the bank are deducted from its resources, while the individual taxpayer is required to pay the 3-mill tax upon money and credits without the deduction of his individual debts; therefore, it is claimed (p. 25 petitioner's brief) the 3-mill tax is equal to that which would be paid by the *bank* should its resources be similarly taxed.

The tax authorized by Congress is not a tax upon the *bank* but upon the *shares* in national banks held by individuals.

Van Allen vs. The Assessors, 3 Wall. 573.

The deduction of the liabilities from the resources of the bank is necessary to find the actual value of the shares. No deduction is allowed for the individual debts of the shareholder, so that while the moneyed capital in the form of national bank shares is taxed at the high rate, other moneyed capital bears another and lower rate.

There is no equivalency in fact and this Court has held there is none in law.

Owensboro Nat'l Bank vs. Owensboro, 173 U. S. 664.
Home Savings Bank vs. Des Moines, 205 U. S. 503.

The question here is as to the power of the State, not what might have been the condition under other circumstances and other laws. Congress permits the taxation of shares in national banks with specified restrictions, and the State acting under and because of that permission has only the limited power conferred upon it. Thus, as said in *Home Savings Bank vs. Des Moines*, *supra*, p. 519:

"If the State has not the power to levy this tax, we will not inquire whether another tax which it might

lawfully impose would have the same ultimate incidence."

And in the Owensboro case, *supra*, it was said, p. 683:

"The argument that public policy exacts that where there is an equality in amount between an unlawful tax and a lawful one, the unlawful tax should be held valid, does not strike us as worthy of serious consideration."

III.

THE FACT THAT THE 3-MILL RATE RESULTED IN DISCLOSING ADDITIONAL TAXABLE PROP- ERTY IS IMMATERIAL.

For the purpose of showing the beneficial effect of the money and credits act of 1911 by securing returns for taxation of additional property and with the further purpose of showing that no actual hostility towards national banks exists in Minnesota, counsel for petitioner present tabulations showing year by year the increase in the amount of money and credits returned for taxation.

This may also be true of the mortgage registry tax of 1907 and of some of the other statutes classifying property for taxation.

We fully recognize, as said by this Court, that Section 5219 was not intended to interfere with the policy of the State in framing its general plan of taxation; the general policy of the State is for it to determine, but having made its determination it must tax shares of national banks in accordance with the policy it has adopted in the case of its own citizens as to other and competing moneyed capital.

People vs. Weaver, 100 U. S. 539.

People vs. Commissioners, 4 Wall. 244.

A similar argument was apparently advanced in the case of *Eddy vs. First National Bank of Fargo*, 275 Fed. 550, and in reply the Circuit Court of Appeals through Circuit Judge Hook said (p. 552):

"It is contended that, were it not for the state statute fixing the small 3-mill rate, much of the individual moneyed capital would escape taxation. If so, it would be largely due to a failure to enforce the laws against individual evasion of taxes, and if that condition, being recognized, is dealt with by statute so broadly as here, substantially equal treatment should be accorded the shares of national banks individually held."

The paving of the State with good intentions will not prevent condemnation of its invalid law.

IV.

RESPONDENT WOULD BE INJURED IF COMPELLED TO PAY AN UNLAWFUL TAX.

At page 45 of petitioner's brief it is argued that in determining the validity of the taxing statute the moneyed capital represented by mortgages will not be considered, as the evidence was that respondent held no mortgages and therefore was not injured by the lower tax on that form of security. This argument is based upon *Albany County vs. Stanley*, 105 U. S. 305, and *Citizens National Bank vs. Kentucky*, 217 U. S. 443. Neither of these support counsels' contention.

In the Stanley case the action was brought by the assignee of individual shareholders in a national bank. The statute under which they had been compelled to pay the tax

was valid upon its face. It provided (p. 309) that no tax should be assessed against the bank but that the stockholders should be assessed and taxed upon the value of their shares but at no greater rate than that assessed upon other money capital in the hands of individuals in the State.

The State Court had held that the debts of the individual stockholders were not deductible from the value of the shares owned by them, and inasmuch as that privilege was given to the owners of personal property other than bank shares, the statute was attacked as in conflict with Section 5219.

In that case the statute was valid upon its face and the rate provided for was entirely within the restrictions imposed by the Act of Congress; whether its enforcement resulted in discrimination against a particular individual depended upon his individual financial condition and this Court held that a shareholder who failed to show he individually was discriminated against would not be heard to claim the statute was invalid.

Here we have a case in which the rate at which shares of national banks are taxed is attacked as not conforming to the rate provided for other moneyed capital. The tax is assessed upon the value of the shares, exclusive of real estate. The character of the assets of the bank are immaterial except as they affect the amount finally taken as the taxable value of the shares.

The test therefore comes when the tax imposed upon the moneyed capital of the shareholder, represented by his investment in the shares of stock, is compared with the tax imposed upon other forms of moneyed capital in the hands of individuals.

The rate upon other moneyed capital is made the standard, and in order that it may be a fair standard it must be

invested in securities "such as normally enter into the business of banking."

Merchants Natl. Bank vs. Richmond, 256 U. S. 635-639.

It is precisely the same as though Congress fixed a definite rate beyond which the State had no authority to go.

To enforce a rate beyond such lawful authority would injure the taxpayer and deprive him of property without due process of law.

The respondent here resists the tax as the agent of the shareholders, and whether or not it deals in real estate mortgages is immaterial.

The other case, *Citizens Natl. Bank vs. Kentucky*, cited by counsel is obviously not authority for their claim.

V.

CHAPTER 416, LAWS 1921, WAS INTENDED TO FAVOR STATE BANKS.

This appears not only from the Act itself, but from the report of the Tax Commission of Minnesota, referred to by counsel on page 6 of petitioner's brief. This reference, coupled with the reiterated claim that no hostility towards national banks was shown and that no unfair discrimination resulted from the various acts of the Legislature makes it proper to give the statement here.

Prior to this Act of 1921, shares in both state and national banks were equally taxed, and in Ch. 8 of 9th Biennial Report, 1924, p. 114, the Tax Commission said the following as to the purpose in making the change:

“The radical change in the method of taxing state banks brought about by the enactment of Chapter 416 was made by the Legislature for the specific purpose of enabling state banks to avoid a ruling of the treasury department of the federal government, which held that banks in making their income tax returns, could not deduct from their gross income the amount of state and local taxes paid by them, because, as the department claimed, such taxes were not a charge against the banks at all, but were a direct charge against the stockholders.”

If this statute could be sustained the following would be the result, first, by placing the tax directly upon state banks, relieve them from the payment to some extent of *Federal* taxes, a privilege not then shared by national banks. Second, by valuing the moneyed capital by the same method as that used to determine the value of shares, to prevent any loss in *State* tax.

I. T. 1629 Int. Rev. Cum. Bul. January-June 1923, p. 161.

The Federal Revenue Act was amended in 1924 and the Department ruled taxes assessed against shareholders and paid by the Bank might be deducted.

Regulation 65 Income Tax Act 1924, Art. 566, p. 163.

The Legislature of Minnesota in 1925 repealed Ch. 416, Laws 1921 and restored the method in force prior to 1921 of taxing shares in state and national banks. This statute is Ch. 304, Laws 1925, p. 385. Counsel for petitioner inadvertently gave it on page 6 of their brief as Ch. 306, Laws 1925.

In the case of *First National Bank of Guthrie Center vs. Anderson*, 269 U. S. 341, this Court said at page 348:

“But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction.”

It may be said we should consider only the burdens imposed by the State and that it is a matter of no concern what burdens the Federal Government imposes upon its national banks, but that would not change the effect of the statute. Its enactment brings us squarely back to the original proposition—that the State having adopted a policy toward those subject to its control must extend an equally liberal policy to shares of national banks.

In this instance, having provided that shares of state banks should go entirely untaxed, it was without power to impose any tax upon shares of national banks. This is a discrimination resulting entirely from the statute of the State and we submit must be condemned.

Des Moines National Bank vs. Fairweather, 263 U. S. 103.

VI.

COMPETING MONEYED CAPITAL.

The argument presented by the very able counsel for petitioner would, if sound, render Section 5219 entirely ineffective.

It must be conceded that any moneyed capital in Minne-

sota other than shares in national banks is, when taxed at all, taxed at a rate much lower than such shares, also that a huge amount of moneyed capital was shown. This leaves only the matter of competition and counsel's argument is to the effect that no competition is possible except between state and national banks and possibly some undefined business concern engaged in *direct* competition with banks.

On page 33 of their brief counsel say:

“ * * * * if the judgment is to stand the affirmation must be upon the ground that the evidence was such as to *require* a finding and determination *here* that a substantial amount of moneyed capital employed as in the banking or investment business was taxed at a lower rate than bank shares.” (Our italics.)

This is plainly erroneous, as the evidence need not be such as to *require* a finding *here*. If this Court deems it necessary to examine the evidence at all it will only do so to determine whether there was *any* evidence to support the findings of the State Court.

There was, however, ample evidence

“that a substantial amount of moneyed capital employed as in the banking or investment business was taxed at a lower rate than bank shares.”

It was shown (Exhibit Q) that investment companies reported to the Reserve Bank mortgages, bonds, stock and securities to the amount of eighty-one million in 1921 and one hundred and ten million in 1922. That trust companies held for individuals some fifty million (R. pp. 26, 37, 65, 66, 140). That commercial paper was annually negotiated through note brokers to the extent of one hundred million (R. pp. 124, 127, 131, 136). That annual bond sales amount-

ed to fifty million (R. pp. 121, 123). That mortgages, including those mentioned, were negotiated annually to the amount of at least one hundred and eighty million.

It was thus shown that investment concerns were dealing upon a large scale in securities which normally enter into the business of banking. Some of these were corporations, and in such case the property of the corporation was taxed at the low rate and the shares of stock went entirely untaxed. If it be claimed the tax upon the property of the corporation is not the test, then the absence of any tax upon the shares of stock representing the individual investment renders void the statute taxing shares in national banks.

Counsel for petitioner recognize this situation, and attempt, at pages 47-49 of their brief, to avoid the effect of decisions of this Court in several cases, including *Mercantile National Bank vs. New York*, 121 U. S. 138, where it was said (p. 157):

“The terms of the Act of Congress therefore include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money.”

The arguments advanced by counsel in support of their claim seem without merit if not entirely meaningless. They say that under the *ad valorem* system, to tax the property of the corporation and also the shares would be double taxation, but assuming that to be true, the state might have taxed the shares of such corporations upon the same basis as national bank shares, and neither double taxation nor improper classification would have resulted.

Counsel do concede shares in state banks to be moneyed

capital within the meaning of Section 5219 (p. 47 petitioner's brief). These were shown to have been of the aggregate value of more than forty million dollars and under Ch. 416, Laws 1921 (Appendix A) were entirely untaxed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 245.—OCTOBER TERM, 1926.

The State of Minnesota, Petitioner,
vs.
First National Bank of St. Paul. } On Writ of Certiorari to
the Supreme Court of
the State of Minnesota.

[March 21, 1927.]

Mr. Justice STONE delivered the opinion of the Court.

The State of Minnesota, the petitioner, brought suit in the district court of Ramsey County, Minnesota, to recover from the First National Bank of St. Paul, the respondent, taxes assessed against its shareholders for the years 1921 and 1922. Respondent resisted the payment of the tax on the ground that the assessment was at a higher rate than that on moneyed capital employed in competition with national banks and hence prohibited by § 5219 of the Revised Statutes of the United States. The trial court gave judgment for petitioner. On appeal judgment was reversed by the Supreme Court of Minnesota and a new trial ordered. 204 N. W. 874. Upon the second trial, had upon the record of the first, the district court held that at the time of the assessment of the taxes in question "a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county, coming into competition with the business of national banks in said county, and with the business of said defendant." Judgment in respondent's favor was affirmed by the Supreme Court of Minnesota. 205 N. W. 375. This Court granted certiorari. 269 U. S. 550; Jud. Code, § 237 (b).

The questions raised are similar to those considered in *First National Bank of Hartford v. City of Hartford*, decided this day, and may be disposed of by the application to the present facts of the principles there considered.

Under the Minnesota statutes, shares of national banks and the moneyed capital of banks or mortgage loan companies organized under the laws of the state are assessed and taxed at forty per cent.

of their full value in the district where located. Gen. Stat. 1923, § 2023; Laws of 1921, c. 416. Money and credits are taxed at the rate of three mills on the dollar of their full cash value and are exempt from all other taxation. Gen. Stat. 1913, § 2316; Laws of 1911, c. 285. Mortgages upon real estate and executory contracts for the sale of real estate are separately taxed at a lower rate; 15 cents per one hundred dollars where the period to run is for five years or less, and 25 cents per one hundred dollars on mortgages and contracts for a longer period. Gen. Stat. 1913, § 2301, *et seq.*; Laws of 1921, c. 445. Money is defined as gold and silver coin, all forms of currency, and all deposits subject to withdrawal on demand. Credits include every demand for money or other valuable thing. Gen. Stat. 1923, § 1980; Laws of 1917, c. 130. Under these statutes money and credits, as defined, are taxed at the three-mill rate and mortgages on real estate at a lesser rate.

It appears that the tax assessed upon the shares of respondent was sixty-seven mills in 1921 and sixty-one and one-half mills in 1922. Although based upon a forty per cent. valuation, the actual rate upon the shares was higher than the prescribed tax of three mills per dollar of full valuation of money and credits and therefore was discriminatory. Petitioner argues that in its actual operation, the tax on national bank shares is no greater than the tax on credits, since under the statute individuals are taxed at the rate of three mills upon the full value of their credits without deducting their liabilities, whereas in taxing bank shares, the liabilities of the banks are deducted from their assets in ascertaining the forty per cent. valuation of their shares. Therefore, it is urged, if bank shares were taxed at the same rate without deducting the bank's liabilities in ascertaining the value of their shares, the amount of the tax would be approximately the same. This argument ignores the fact that the tax authorized by § 5219 is against the holders of the bank shares and is measured by the value of the shares, and not by the assets of the bank without deduction of its liabilities, *Des Moines National Bank v. Fairweather*, 263 U. S. 103, and that the bank share tax must be compared with the tax assessed on competing moneyed capital of individuals invested in credits, or the tax on capital invested by individuals in the shares of corporations whose business competes with that of national banks. *Mercantile Bank v. New York*, 121 U. S. 138, 156, 157; *First National Bank v. Anderson*, 269 U. S. 341, 348. Thus compared, the

actual tax imposed upon the shares of respondent, like the tax imposed upon credits in the hands of individuals, is assessed without deducting the liabilities of their individual owners, but at different rates. This discrimination is prohibited by § 5219 if moneyed capital in the hands of individuals in Minnesota is employed in substantial competition with national banks within the state.

The evidence shows that there were money and credits listed for taxation in the entire state during each of the years in question in excess of \$400,000,000, exclusive of municipal bonds and recorded real estate mortgages, and in Ramsey County alone, where respondent conducts its banking business, there were like money and credits in excess of \$83,000,000, all of which were subject to the three-mill tax. The evidence shows that in Ramsey County there were listed for taxation for 1921 in the hands of individuals, promissory notes amounting to \$2,481,446, and bonds, exclusive of tax exempt bonds and real estate mortgages to \$7,595,975; for 1922, notes to \$1,648,810, bonds to \$9,931,955. There was invested in those years in real estate mortgages in Minnesota over \$185,000,000 annually. The investment of national banks in Minnesota in those years in real estate mortgages was in excess of \$19,000,000; in United States government bonds in excess of \$41,000,000, and in other securities \$33,800,000. The share value of national banks in Minnesota in those years, not including real estate, was a little more than \$60,000,000, and less than two-thirds of their total investment in the securities mentioned.

Note brokers within the state in those years made loans to their customers upon paper which they sell to banks and other investors, amounting to as much as \$100,000,000 annually. Much of this paper is sold outside of the state, but the amount sold to banks and to individuals within the state is substantial. One class of this paper known as "cattle loan paper" exceeded \$22,000,000 annually in the years in question, and of this \$13,000,000 was sold to banks, corporations, firms and individuals in Minnesota. The amount shown to have been sold to individuals approximated \$1,000,000. Eleven business concerns to whom respondent made loans, borrowed from their own officers and employees in one of the years in question about \$1,500,000.

Individuals and corporations using substantial capital are engaged within the state in business as investment houses, dealing

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in bonds and mortgages, such as normally enter into the business of banking. Two such corporations in Ramsey County had a capital aggregating \$2,250,000. One of them sold \$13,000,000 of bonds in Minnesota in 1922, and had sold prior to May 1, 1921, mortgages which were still outstanding aggregating more than \$25,000,000.

Taken as a whole, the evidence tends to show without material contradiction that there is a large amount of moneyed capital in the state employed in normal banking activities such as loans, purchases and sale of notes, bonds and real estate mortgages, and that large amounts of capital are invested and reinvested in such securities by individual investors within the state.

But petitioner asserts that it does not appear from the record whether those engaged in the business of note brokers or in the business of acquiring and selling securities are individuals or corporations, and the amount of capital employed by any of them is not indicated. While this assertion is not borne out completely by the record, in the view we take, its truth is not of controlling consequence. The businesses and activities described could not be carried on in the volume indicated without the employment of large amounts of capital and in fact some corporations engaged in these activities were shown to have a large capitalization. It was not necessary that the particular amounts be specified. That capital, if invested in the business of individuals, is moneyed capital in the hands of individual citizens, within the meaning of § 5219. If invested in corporations, as appears in some instances, the share capital in the hands of shareholders is likewise moneyed capital within the meaning of that section.

It is said also that the evidence as to individuals was that large amounts of credits, including bonds, mortgages and notes were acquired by individuals by loan or purchase in the state and county, but that there is no evidence tending to show that any of these securities were held or employed by individuals in banking or investment business or in any other business. But as we have held in *First National Bank of Hartford v. City of Hartford*, the competition guarded against by § 5219 may arise either from the employment of capital invested in a business, even though the competition be with some but not all phases of the business of national banks, or it may arise from the employment of capital invested by institutions or individuals in particular operations or investments like those of national banks.

It is also urged that the record does not admit of a finding that the funds invested in these credits come into competition with national banks within the meaning of § 5219. To this it is answered by respondent that the court is required to take judicial notice of general conditions to which the law applies and that the taxing laws of Minnesota construed in the light of conditions generally known, show upon their face that they create a discrimination against national banks not permitted by the federal act. But it is unnecessary for us to enter upon the field of judicial notice, for it clearly appears from the evidence, as the court below found, that a large proportion of these investments consisted of investments of individuals out of surplus funds which they were investing and reinvesting in bonds, mortgages and other evidences of indebtedness and that these transactions or continued activities are such as normally constitute an important part of the business of banking as conducted by respondent and other national banks in Minnesota. There is direct evidence, also, that the investments of individuals in this type of security aggregating large amounts lessens the opportunity for the investment of capital by national banks. The only witness called by petitioner admitted that to some extent such competition existed. In this state of the record we think the findings of the state court are supported by the evidence.

That capital of individuals thus seeking investment and reinvestment in competition with the capital in national banks is moneyed capital coming into competition with the business of national banks within the meaning of § 5219 is the effect of our decision in *First National Bank of Hartford v. City of Hartford*, *supra*, and other cases there considered.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

